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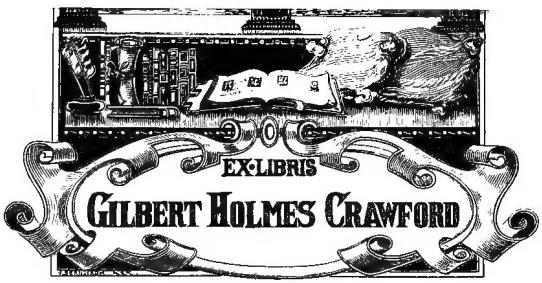

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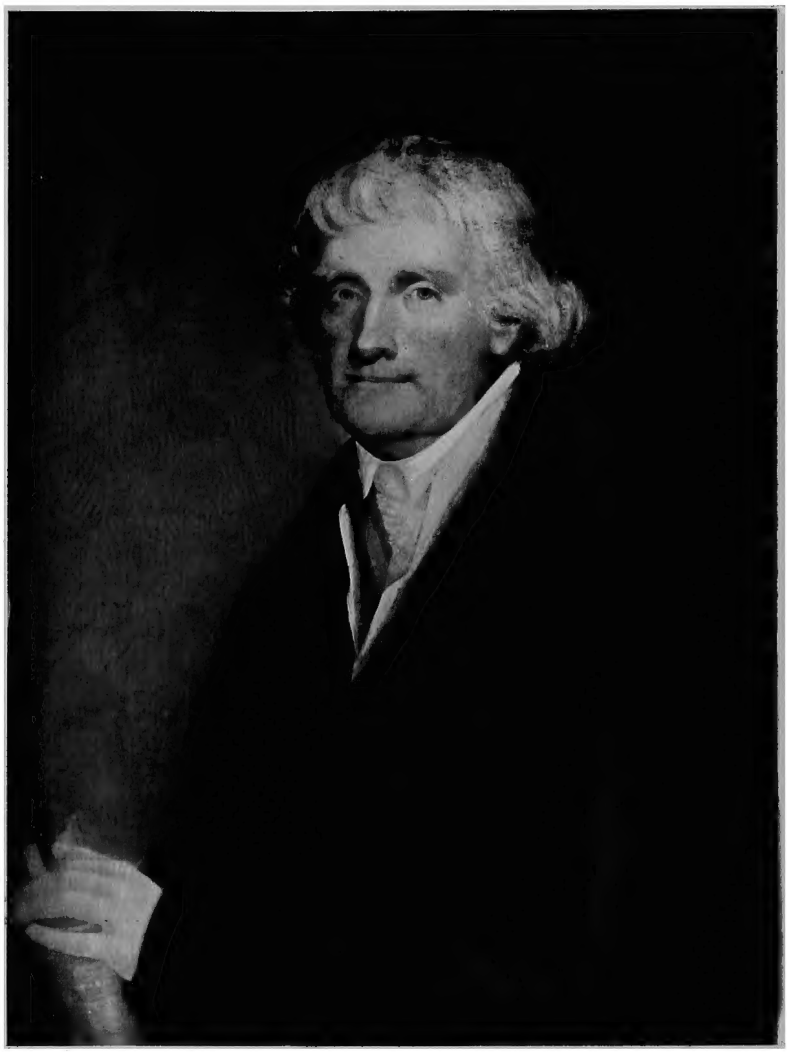

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Thomas Jefferson

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Volume VII

G. P. Putnam's Sons
New York and London
The Knickerbocker Press
1904

The Knickerbocker Press, New York

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ITINERARY AND CHRONOLOGY

OF

THOMAS JEFFERSON

1792–1793

At Philadelphia.

1792.—May 29. Sends letter on Treaty to Hammond.

June 3. Hammond dines with Jefferson.

18. Writes Notes on Young's Letter.

July 10. Has interview with Washington.

13. Leaves Philadelphia.

22. Arrives at Monticello.

Sept. 9. Writes defence to President.

22. Leaves Monticello.

30. At Gunston Hall.

Oct. 1. At Mount Vernon.

At Georgetown and Bladensburg.

2. At Baltimore.

5. At Wilmington.

At Philadelphia.

Residence at 287 High (now Market) Street.

Department of State office in High (now Market) Street.

31. Cabinet meeting.

Nov. Drafts paragraphs for President's Message.

? Drafts Act concerning Public Debt.

26. Reports on Neufville.

Dec. 1. Drafts amendment to Intercourse Bill.

3. Opinion on Fugitive Slaves.

7. Drafts Message on Southern Indians.

10. Cabinet meeting.

Writes Notes on Bankrupt Bill.

27. Interview with President.

1793.—Jan.		Draws instructions for Michaux.
		Reconsiders resignation.
		Sells negroes.
Feb.	7.	Paper on Maladministration of Treasury.
		Interview with President.
	?	Drafts Giles Resolutions.
	12.	Questions and notes as to France.
	13.	Sends circular letter on commerce.
	16.	Reports on Rogers.
	20.	Interview with President.
		Offered French Mission.
	25.	Drafts Cabinet Opinion on French Application.
		Drafts Cabinet Opinion on Indian War.
	27.	Giles Resolutions moved.
	28.	Cabinet meeting.
Mar.	2.	Drafts Cabinet Opinion on French Debt.
		Rents house on banks of Schuylkill.
	10.	Reports on Indian boundaries.
		Drafts Cabinet Opinion on Filibusters.
	18.	Cabinet Council.
Apr.	8.	Genet lands at Charleston.
	19.	Drafts Cabinet Opinion on Proclamation and French Minister.
	22.	Proclamation of Neutrality signed.
		Cabinet learns of Genet's arrival.
	28.	Opinion on French Treaties.
May	8.	Opposes Hamilton's circular to collectors.
	16.	Opinion on *Little Sarah*.
		Genet arrives in Philadelphia.
	18.	Ternant delivers letter of recall.
		Genet presents letter of credence.
	20.	Cabinet Council.
	23.	Interview with President.
	29.	Drafts Cabinet Opinion on Creek Indians.
June	1.	Drafts Cabinet Opinion on Secret Indian Agent.
	5.	Opinion on New Loan.
	12.	Drafts Cabinet Opinion on *Polly* and *Catherine*.
	17.	Second Opinion on New Loan.
		Drafts Cabinet Opinion on French Privateers.
	19.	Writes to Hammond on Treaty.
	20.	Drafts Cabinet Opinion on Spanish Affairs.
July	5.	Cabinet Meeting on Genet's Application.
		Receives call from Genet.
	7.	Has Interview with Genet Relative to *Little Sarah*.
	8.	Dissents from Cabinet Opinion on *Little Sarah*.

1793.—July	10.	Drafts Cabinet of Decision.
	12.	Drafts Cabinet Opinion on Privateers and Prizes.
	15.	Cabinet Meeting in regard to *Little Sarah*.
	18.	Partly Drafts Questions for Judges.
	23.	Cabinet meeting on French Debt.
	29.	Drafts Cabinet Questions.
	30.	Rules concerning belligerents discussed.
	31.	Renews request to resign.
Aug.	2.	Recall of Genet decided on.
	3.	Rules governing belligerents adopted.
	4.	Opinion on calling Congress.
	5.	Drafts Cabinet Opinion on Privateers and Prizes.
	6.	Interview with Washington concerning Resignation.
	15.	Drafts Cabinet Opinion on Prizes.
	16.	Frames Letter to Morris on recall of Genet.
	20.	Letter to Morris agreed upon.

CORRESPONDENCE AND MISCELLANEOUS WRITINGS

1792–1793

CORRESPONDENCE

AND

MISCELLANEOUS WRITINGS

1792–1793

TO THE BRITISH MINISTER [1]

(GEORGE HAMMOND)

May 29, 1792.

SIR,—Your favor of Mar 5 has been longer unanswered than consisted with my wishes to forward

[1] This is the first or rough draft of the letter. The copy as finally framed and sent being printed in the *State Papers* (Foreign Relations, I., 201), with an appendix of documents in support of the letter. This draft was submitted to Madison and Edmund Randolph (*see* VI., 487) and then to Hamilton, who made the following notes, upon which Jefferson commented as indicated. This paper is printed in the two editions of Hamilton's *Works*, but in both is misdated "March, 1791."

Hamilton's Notes.	*Jefferson's Comments.*
Mr. Hamilton presents his respectful compliments to the Secretary of State. He has perused, with as much care and attention as time has permitted, the draft of a letter in answer to that of Mr. Hammond, of March 5th.	
Much *strong* ground has been	

as much as possible explanations of the several matters it contained. But these matters were very various, & the evidence of them not easily to be

taken, and *strongly* maintained, particularly in relation to

The *recommendatory* clauses of the treaty,

The previous infractions by Great Britain, as to *negroes* and posts,

The question of interest.

And many of the suggestions of the British minister, concerning particular acts and adjudications, as far as can be judged without consulting the documents, appear to be satisfactorily obviated.

But doubts arise in the following particulars:

1st. The expediency of the retaliation on the 1st, 2d, and 3d pages. Much of the propriety of what is said depends on the question of the original *right* or *wrong* of the war. Should it lead to observations on that point, it may involve an awkward and irritating discussion. Will it not be more dignified, as well as more discreet, to observe, concisely and generally, on the impropriety of having deduced imputations from transactions during the war, and (alluding in the aggregate, and without *specification*, to the instances of legislative warfare on the part of the British parliament, which might be criminated) to say that this is foreborne, as leading to an unprofitable and unconciliating discussion?

First Objection. The retaliatory clause is struck out, and only a general allusion to the instances of legislative warfare by the British Parliament is proposed.

2d. The soundness of the doctrine (page 4), that all govern-

Second Objection. As to matters of treaty, the State govern-

obtained, even where it could be obtained at all. It has been a work of time & trouble to collect from the different States all the acts themselves of which

mental acts of the *States* prior to the 11th of April are out of the discussion. Does not the term "subjects" to whom, according to Vatel, notice is necessary, apply merely to individuals? Are not *States* members of the federal league, the *parties contractantes*, "who are bound by the treaty itself, from the time of its conclusion; that is, in the present case, from the time the provisional treaty took effect, by the ratification of the preliminary articles between France and Britain?"

3d. The expediency of so full a justification of the proceedings of certain States with regard to debts. In this respect, *extenuation* rather than vindication would seem to be the desirable course. It is an obvious truth, and is so stated, that Congress alone has the right to pronounce a breach of the treaty, and to fix the measure of retaliation. Not having done it, the States which undertook the task for them, contravened both their federal duty and the treaty. Do not some of the acts of Congress import that the thing was viewed by that body in this light? Will it be for the Executive now to implicate itself in too strong a defence of measures which have been regarded by a great proportion of the Union, and by a respectable part of the citizens of almost every State, as exceptionable in various lights? May not

ments were mere subjects. Their action, like those of corporations in England, or like any other individuals, can only be governed by the promulgation; which, therefore, is the term for their conformity. They are the 'sujets' of Vatel, and 'subsiti' of Wolf in the passages before referred to.

Third Objection. It cannot be disputed that Great Britain has been guilty of the first infractions —that these infractions have been highly injurious to us. I am therefore of opinion that Great Britain cannot say we have done wrong in retarding, in the moderate degree we have done, execution of some parts of the treaty, as an equivalent to what she had previously refused to fulfil on her part; that she cannot found on that any claim of indemnification for debts lost by lapse of time; and that the justifiable rights of our country ought not to be given up by those whom they have appointed and trusted to defend them where they may be justly defended.

you had cited the titles, and to investigate the judiciary decisions which were classed with those acts as infractions of the treaty of peace. To these causes

too earnest an apology for instalment and paper money laws, if made public hereafter, tend to prejudice, somewhat, the cause of good government, and perhaps to effect disadvantageously the character of the general government?

To steer between too much *concession* and too much justification in this particular, is a task both difficult and delicate; but it is worthy of the greatest circumspection to accomplish it.

4. The expediency of risking the implication of the *tacit approbation* of Congress of the "retaliation of four States" by saying that they neither *gave* nor *refused* their sanction to those retaliations. Will not the national character stand better if no ground to suspect the connivance of the national government is afforded? Is not the fact that Congress were inactive spectators of the infractions which took place, because they had no effectual power to control them?

Fourth Objection. The passage here alluded to is in the recapitulation, § 3. It is struck out, and stands now—see letter.

5. The truth of the position, which seems to be admitted (page 57), that the quality of *alien enemy* subsisted till the definitive treaty. Does not an *indefinite cessation* of hostilities, founded too on a preliminary treaty, put an end to the state of war, and consequently destroy the relation of alien enemy?

The state of war may or may not revive if points which remain to

Fifth Objection. I rather consider a preliminary treaty as establishing certain heads of agreement, and a truce till these and others can be definitively arranged; as suspending acts of hostility, and as not changing the legal character of the *enemy* into that of a *friend*. However, as this might be susceptible of a contradiction not worth our while to excite in this instance, I have

of delay may be added the daily duties of my office, necessarily multiplied during the sessions of the legislature.

§ 1. I can assure you with truth that we meet you on this occasion with the sincerest dispositions to remove from between the two countries those

be adjusted by a definitive treaty are never adjusted by such a treaty; but it is conceived that a definitive treaty may never take place, and yet the *state of war* and all its consequences be completely terminated.

6. The expediency of grounding any argument on the supposition of either parties being in the *wrong* (as in page 65). The rule in construing treaties is to suppose both parties in the right, for want of a *common judge*, &c. And a departure from this rule in argument might possibly lead to unpleasant recrimination.

The foregoing are the principal points that have occurred on one perusal. They are submitted without reserve: Some lesser matters struck, which would involve too lengthy a commentary. Many of them merely respecting particular expressions. A mark × is in the margin of the places which will probably suggest to the Secretary of State, on revision, the nature of the reflections which may have arisen. It is imagined that there is a small mistake in stating that Waddington paid no rent.

struck out all affirmation of the position.

Sixth Objection. The word *wrong* in the passage here alluded to is struck out, and the word *act* substituted. We may say with truth that it was by their *act* we were hindered from paying interest. While not qualifying it with the epithet of either *right* or *wrong* they are free to consider it as the former, while we do tacitly as the latter.

Wherever the mark × has been found, and its object understood, the passage has been corrected. They seem principally to have been affixed to those passages susceptible of being softened in the manner of expression; in some instances they were not understood. The mistake in the case of Waddington and Rutgers is corrected.

See also I., 211; VI., 487., and the letter to Madison, *post.*, of June 1, 1792. In the Jefferson MSS. in the Department of State is a series of notes and other papers used or written by Jefferson when preparing

obstacles to a cordial friendship which have arisen from an inexecution of some articles of the treaty of peace. The desire entertained by this country to be on the best terms with yours, has been constant, & has manifested itself through it's different forms of administration by repeated overtures to enter into such explanations & arrangements as should be right & necessary to bring about a complete execution of the treaty. The same dispositions lead us to wish that the occasion now presented should not be defeated by useless recapitulations of what had taken place anterior to that instrument. It was with concern therefore I observed that you had thought it necessary to go back to the very commencement of the war, & [to enumerate & comment in several parts of your letter, on all the acts of our different legislatures passed during the whole course

this letter. Jefferson originally intended to insert an argument on the difference between bond and simple contracts, and enclosed his notes to Madison in the following letter:

TH. J. TO J. MADISON

"I send you my ideas of what might be said on the distinction between bonds & simple contracts, if any thing should be said. But my office being to vindicate the opinions of the courts, and none of the courts having made any distinction between these two cases, I ought to tread in their footsteps only: and the rather as Mr. Hammond has not raised any such distinction on his part. It would be quite time enough for me to answer any objection founded in that difference, when the objection shall be made. It probably will never be made. To enter into it voluntarily may be to move a peice into prise which there is no occasion to move at all.

"May 13. 1792."

This project, however, was never carried out, though in the Jefferson MSS. (5.1.) there is an argument by Madison on the subject, evidently prepared as a reply to Jefferson's view.

of it. I will quote a single passage of this kind from page 9.

"*During the war* the respective legislatures of the U. S. passed laws to confiscate & sell, to sequester, take possession of & lease the estates of the loyalists, & to apply the proceeds thereof towards the redemption of certificates & bills of credit, or towards defraying the expenses of the war, to enable debtors to pay into the state treasuries or loan offices paper money, then exceedingly depreciated, in discharge of their debts. Under some of the laws, many individuals were attainted by name, others were banished for ever from the country, &, if found within the state, declared felons without benefit of clergy. In some states, the estates and rights of married women, of widows, & of minors, and of persons who have died within the territories possessed by the British arms were forfeited. Authority, also was given to the executive department to require persons who adhered to the crown to surrender themselves by a given day, & to abide their trials for High treason; in failure of which the parties so required were attainted, were subjected to, & suffered all the pains, penalties, & forfeitures awarded against persons attainted of High treason. In one state (New York) a power was vested in the courts to prefer bills of indictment against persons alive or dead, who had adhered to the king, or joined his fleets or armies, (if in full life & generally reputed to hold or claim, or, if dead, to have held or claimed, at the time of their decease real or personal estate) & upon notice or neglect to appear & traverse the indictment or

upon trial & conviction the persons charged in the indictment, whether *in full life or deceased*, were respectively declared guilty of the offences charged, & their estates were forfeited, whether in possession, reversion or remainder. In some of the states confiscated property was applied to the purposes of public buildings & improvements: in others was appropriated as rewards to individuals for military services rendered during the war, & in one instance property mortgaged to a British creditor, was liberated from the incumbrance by a special act of the legislative, as a provision for the representatives of the mortgager who had fallen in battle."

However averse to call up the disagreeable recollections of that day, the respect & duty we owe our country, forbids us to suffer it to be thus placed in the wrong, when it's justification is so easy. Legislative warfare was begun by the British parliament. The titles of their acts of this kind, shall be subjoined to the end of this letter. The stat. 12 G. 3 c. 24. for carrying our citizens *charged* with the offences it describes, to be tried in a foreign country; by foreign judges instead of a jury of their vicinage, by laws not their own, without witnesses, without friends or the means of making them; that of the 14 G. 3. c. 39. for protecting from punishment those who should murder an American in the execution of a British law, were previous to our acts of Exile, & even to the commencement of war. Their act of 14. G. 3. c. 19. for shutting up the harbor of Boston, & thereby annihilating, with the commerce of that city, the value of it's property; that of 15 G. 3. c.

10. forbidding us to export to foreign markets the produce we have hitherto raised and sold at those markets, & thereby leaving that produce useless on our hands; that of 10. G. 3. c. 5. prohibiting all exports even to British markets, & making them legal prize when taken on the high seas, was dealing out confiscation, by wholesale, on the property of entire nations, which our acts, cited by you, retaliated but on the small scale of individual confiscation. But we never retaliated the 4th section of the last mentioned act, under which multitudes of our citizens taken on board our vessels were forced by starving, by periodical whippings, & by constant chains to become the murderers of their countrymen, perhaps of their fathers & brothers. If from this legislative warfare we turn to those scenes of active hostility which wrapped our houses in flame, our families in slaughter, our property in universal devastation, is the wonder that our legislatures did so much, or so little? Compare their situation with that of the British parliament enjoying in ease and safety all the comforts & blessings of the earth, & hearing of these distant events as of the wars of Benaris or the extermination of the Rohillas, & say with candor whether the difference of scene & situation would not have justified a contrary difference of conduct towards each other?][1] & in several parts of your letter, to enumerate & comment on all the acts of our different legislatures, passed during the whole course of it, in order to deduce from thence imputations, which your justice would have suppressed,

[1] This whole section in [ ] is struck out in original.

had the whole truth been presented to your view, instead of particular traits, detached from the ground on which they stood. However easy it would be to justify our country, by bringing into view the whole ground, on both sides, to shew that legislative warfare began with the British parliament, that, when they levelled at persons or property, it was against entire towns or countries, without discrimination of cause or conduct, while we touched individuals only, naming them, man by man, after due consideration of each case, and careful attention not to confound the innocent with the guilty; however advantageously we might compare the distant and tranquil situation of their legislature with the scenes, in the midst of which ours were obliged to legislate, and might then ask Whether the difference of circumstance & situation would not have justified a contrary difference of conduct, & whether the wonder ought to be that our legislatures had done so much, or so little—we will waive all this; because it would lead to recollections, as unprofitable as unconciliating. The titles of some of your acts, and a single clause of one of them only shall be thrown among the Documents at the end of this letter; [No. 1. 2.] and with this we will drop forever the curtain on this tragedy!

§ 2. We now come together to consider that instrument which was to heal our wounds & begin a new chapter in our history. The state in which that found things is to be considered as rightful. So says the law of nations.

"L'état où les choses se trouvent au moment du

traité doit passer pour legitime; et si l'on veut y apporter du changement il faut que le traité en fasse une mention expresse. Par consequent toutes les choses dont le traité ne dit rien, doivent demeurer dans l'état où elles se trouvent lors de sa conclusion." Vattel, l. 4, § 21. "De quibus nihil dictum, ea manent quo sunt loco." Wolf, § 1222.[1] No alterations then are to be claimed on either side, but those which the treaty has provided. The moment too to which it refers as a rule of conduct for this country at large, was the moment of it's notification to the country at large.

Vattel. l. 4, § 24. "Le traité de paix oblige les *parties contractantes* du moment qu'il est conclu aussitôt qu'il a reçu toute sa forme; et elles doivent procurer incessamment l'execution—mais ce traité n'oblige les *sujets* que du moment qu'l leur est notifié." And § 25. "Le traité devient *par la publication*, un loi pour les sujets, et ils sont obligés de se conformer désormais aux dispositions dont on y est convenu." And another author as pointedly says "Pactio pacis *paciscentes* statim obligat quam primum *perfecta*, cum ex pacto veniat obligatio. Subditos vero et milites, quam primum iisdem fuerit *publicata;* cum de eâ *ante publicationem ipsis certo constare non possit.*" Wolf, § 1229. It was stipulated indeed by the IXth Article that "if before it's arrival in America" any place or territory belonging to either party should be conquered by the arms of the other, it should be restored. This

[1] In the copy printed in the *State Papers*, these quotations are all translated.

was the only case in which transactions intervening between the signature & publication were to be nullified.

Congress on the 24th of Mar. 1783. received informal intelligence from the Marquis de la Fayette that Provisional articles were concluded; & on the same day they received a copy of the articles in a letter of Mar. 19. from Genl. Carleton & Admiral Digby. They immediately gave orders for recalling all armed vessels, & communicated the orders to those officers, who answered on the 26th & 27th that they were not authorized to concur in the recall of armed vessels on their part. On the 11th of April, Congress receive an official copy of these articles from Doctor Franklin, with notice that a Preliminary treaty was now signed between France, Spain & England. The event having now taken place on which the Provisional articles were to come into effect on the usual footing of Preliminaries, Congress immediately proclaim them, & on the 19th of April, a Cessation of hostilities is published by the Commander in chief.—These particulars place all acts preceding the 11th of April out of the present discussion, & confine it to the treaty itself, and the circumstances attending it's execution. I have therefore taken the liberty of extracting from your list of American acts all those preceding that epoch, & of throwing them together in the paper No. 6, as things out of question. The subsequent acts shall be distributed according to their several subjects of I. Exile and Confiscation. II. Debts. and III. Interest on those debts; Beginning, Ist. with those

of Exile and Confiscation, which will be considered together, because blended together in most of the acts, & blended also in the same Article of the treaty.

§ 3. It cannot be denied that the state of war strictly permits a nation to seize the property of it's enemies found within its own limits, or taken in war, and in whatever form it exists whether in action or possession. This is so perspicuously laid down by one of the most respected writers on subjects of this kind, that I shall use his words,

"Cum ea sit belli conditio, ut hostes sint omni jure spoliati, rationis est, quascunque res hostium, apud hostes inventas dominum mutare, et fisco cedere. Solet præterea in singulis fere belli indictionibus constitui, ut bona hostium, tam *apud nos reperta*, quam capta bello, publicentur.—Si merum jus belli sequamur, etiam *immobilia* possent vendi, et eorum pretium in fiscum redigi, ut in mobilibus obtinet. Sed in omni fere Europâ sola fit annotatio, ut eorum fructus, durante bello, percipiat fiscus, finito autem bello, ipsa immobilia ex pactis restituuntur pristinis dominis." Bynkersh. *Quest. Jur. Pub.* l. 1, c. 7.

Every nation indeed would wish to pursue the latter practice, if under circumstances leaving them their usual resources. But the circumstances of our war were without example. Excluded from all commerce even with Neutral nations, without arms, money, or the means of getting them abroad, we were obliged to avail ourselves of such resources as we found at home. Great Britain, too, did not consider it as an ordinary war, but a rebellion; she did not conduct it according to the rules of war established by

the law of nations, but according to her acts of parliament, made from time to time to suit circumstances. She would not admit our title even to the *strict rights* of ordinary war: she cannot then claim from us its *liberalities*.—yet the confiscations of property were by no means universal; and that of Debts still less so. What effect was to be produced on them by the Treaty, will be seen by the words of the Vth Article, which are as follows.

§ 4. "ARTICLE V. It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights & properties, which have been confiscated, belonging to real British subjects, & also of the estates, rights & properties of persons resident in districts in the possession of his Majesty's arms, & who have not borne arms against the sd U. S.: and that persons of any other description shall have free liberty to go to any part or parts of the thirteen U. S. & therein to remain twelve months, unmolested in their endeavors to obtain the restitution of such of their estates, rights & properties, as may have been confiscated; & that Congress shall also earnestly recommend to the several states a reconsideration & revision of all acts or laws regarding the premises, so as to render the sd laws or acts perfectly consistent, not only with justice & equity, but with that spirit of conciliation, which on the return of the blessings of peace should universally prevail, & that Congress shall also earnestly recommend to the several states, that the estates, rights & properties of such last-

mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bonâ fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

"ARTICLE VI. That there shall be no future confiscations made."

§ 5. Observe that in every other article the parties agree expressly that such & such things *shall be done:* in this they only agree to *recommend* that they shall be done. You are pleased to say (pa. 7.) "It cannot be presumed that the Commissioners who negotiated the treaty of peace would engage in behalf of Congress to make *recommendations* to the legislatures of the respective states, which they did not expect to be effectual, or enter into direct stipulations which they had not the power to enforce." On the contrary we may fairly presume that if they had had the power to *enforce*, they would not merely have *recommended.* When in every other article they agree expressly *to do*, why in this do they change the stile suddenly & agree only to *recommend?* Because the things here proposed to be done were retrospective in their nature, would tear up the laws of the several states, & the contracts & transactions private & public which have taken place under them; & retrospective laws were forbidden by the constitu-

tions of several of the states. Between persons whose native language is that of this treaty, it is unnecessary to explain the difference between *enacting* a thing to be done, & *recommending* it to be done; the words themselves being as well understood as any by which they could be explained. But it may not be unnecessary to observe that *recommendations* to the people, instead of *laws*, had been introduced among us, & were rendered familiar in the interval between discontinuing the old, & establishing the new governments. The conventions & committees who then assembled to guide the conduct of the people, having no authority to oblige them by law, took up the practice of simply recommending measures to them. These recommendations they either complied with, or not, at their pleasure. If they refused, there was complaint, but no compulsion. So after organizing the governments, if at any time it became expedient that a thing should be done, which Congress, or any other of the organized bodies, were not authorized to ordain, they simply recommended, & left to the people, or their legislatures, to comply or not, as they pleased. It was impossible that the Negotiators on either side should have been ignorant of the difference between agreeing *to do* a thing, & agreeing only to *recommend* it to be done. The import of the terms is so different, that no deception or surprise could be supposed, even if there were no evidence that the difference was attended to, explained & understood.

§ 6. But the evidence on this occasion removes all

question. It is well known that the British court had it extremely at heart to procure a restitution of the estates of the refugees, who had gone over to their side: that they proposed it in the first conferences, & insisted on it to the last: that our Commissioners, on the other hand, refused it from first to last, urging, 1st. that it was unreasonable to restore the confiscated property of the refugees, unless they would reimburse the destruction of the property of our citizens, committed on their part; & 2dly. That it was beyond the powers of the Commissioners to stipulate, or of Congress to enforce. On this point the treaty hung long. It was the subject of a special mission of a confidential agent of the British negotiator from Paris to London. It was still insisted on on his return, & still protested against by our Commissioners; & when they were urged to agree only that Congress should *recommend* to the state legislatures to restore the estates &c. of the refugees, they were expressly told that the legislatures would not regard the recommendation. In proof of this, I subjoin extracts from the letters & journals of Mr. Adams & Dr. Franklin, two of our Commissioners, the originals of which are among the records of the department of state, & shall be open to you for a verification of the copies. [No. 7, 8, 9, 10, 11, 12.] These prove beyond all question that the difference between an express agreement to do a thing, & to recommend it to be done, was well understood by both parties, & that the British negotiators were put on their guard by those on our part, not only that the legislatures would be free to refuse, but that they

probably would refuse. And it is evident from all circumstances that Mr. Oswald accepted the *recommendation* merely to have something to oppose to the clamours of the refugees, to keep alive a hope in them that they might yet get their property from the state legislatures; & that if they should fail in this, they would have ground to demand indemnification from their own government: and he might think it a circumstance of present relief at least that the question of indemnification by them should be kept out of sight till time & events should open it upon the nation insensibly.

§ 7. The same was perfectly understood by the British ministry and by the members of both houses in parliament, as well those who advocated, as those who opposed the treaty: the latter of whom, being out of the secrets of the negotiation, must have formed their judgments on the mere import of the terms. That all parties concurred in this exposition, will appear by the following extracts from the Parliamentary register, a work, which without pretending to give what is spoken with verbal accuracy, may yet be relied on we presume for the general reasoning and opinions of the Speakers.

House of Commons

The Preliminary Articles under Consideration. 1783, Feb. 17

Mr. Thomas Pitt.—"That the interest of the sincere loyalists were as dear to him as to any man, but that he could never think it would have been

promoted by carrying on that unfortunate war which parliament had in fact suspended before the beginning of the treaty; that it was impossible, after the part Congress was pledged to take in it, to conceive that their *recommendation* would not have it's proper influence on the different legislatures; that he did not himself see what more could have been done on their behalf, except by renewing the war for their sakes, and increasing our and their calamities." *9. Debrett's Parl. register, 233.*

Mr. Wilberforce. "When he considered the case of the loyalists, he confessed he felt himself there conquered; there he saw his country humiliated; he saw her at the feet of America! Still he was induced to believe, that Congress would religiously comply with the article and that the loyalists would obtain redress from America—Should they not, this country was bound to afford it them. They must be compensated. Ministers, he was persuaded, meant to keep the faith of the nation with them, and he verily believed, had obtained the best terms they possibly could for them." *Ib. 236.*

Mr. Secretary Townsend. "He was ready to admit, that many of the Loyalists had the strongest claims upon this country; and he trusted, should the *recommendation* of Congress to the American States prove unsuccessful, which he flattered himself would not be the case, this country would feel itself bound in honor to make them full compensation for their losses." *Ib. 262.*

HOUSE OF LORDS. *Feb. 17, 1783.*

Lord Shelburne—"A part must be wounded, that the whole of the Empire may not perish. If better terms could be had, think you, my Lords, that I would not have embraced them? You all know my creed. You all know my steadiness. If it were possible to put aside the bitter cup the adversities of this country presented to me, you know I would have done it; but you called for peace.—I had but the alternative, either to accept the terms (said Congress) of our recommendations to the States in favor of the colonists, or continue the war. It is in our power to do *no more than recommend.* Is there any man who hears me, who will clap his hand on his heart, and step forward and say, I ought to have broken off the treaty? If there be, I am sure he neither knows the state of the country, nor yet has he paid any attention to the wishes of it.—But say the worst: and that, after all, this estimable set of men are not received and cherished in the bosom of their own country. Is England so lost to gratitude, and all the feelings of humanity, as not to afford them an asylum? Who can be so base as to think she will refuse it to them? Surely it cannot be that noble minded man who would plunge his country again knee-deep in blood, and saddle it with an expense of twenty millions for the purpose of restoring them. Without one drop of blood spilt, and without one fifth of the expense of one year's campaign, happiness and ease can be given the loyalists in as ample a manner as these blessings were ever in their

enjoyment; therefore let the outcry cease on this head." *Ib.*, *70*, *71*.

Lord Hawke.—"In America, said he, Congress had engaged to recommend their [the Loyalists] cause to the legislatures of the country: What other term could they adopt? He had searched the journals of Congress on this subject: what other term did they or do they ever adopt in their requisitions to the different provinces? It is an undertaking on the part of Congress; that body, like the King here, is the executive power of America. Can the crown undertake for the two houses of Parliament? It can only recommend. He flattered himself that recommendation would be attended with success: but, said he, state the case, that it will not, the liberality of Great Britain is still open to them. Ministers had pledged themselves to indemnify them, not only in the address now moved for, but even in the last address, and in the speech from the throne."

Lord Walsingham. "We had only the *recommendation* of Congress to trust to; and how often had their recommendations been fruitless? There were many cases in point in which provincial assemblies had peremptorily refused the recommendations of Congress. It was but the other day the States refused money on the recommendation of Congress. Rhode Island unanimously refused when the Congress desired to be authorized to lay a duty of 5. per cent. because the funds had failed. Many other instances might be produced of the failure of the recommendations of Congress, and therefore we ought not, in negotiating for the loyalists, to have

trusted to the recommendations of Congress. Nothing but the *repeal* of the acts existing against them ought to have sufficed, as nothing else could give effect to the treaty; *repeal* was not mentioned. They had only stipulated to revise and reconsider them." *11. Debrett's Par. reg. 44.*

Lord Sackville. "The King's ministers had weakly imagined that the *recommendation* of Congress was a sufficient security for these unhappy men. For his own part, so far from believing that this would be sufficient, or anything like sufficient for their protection, he was of a direct contrary opinion; and if they entertained any notions of this sort, he would put an end to their idle hopes at once, by reading from a paper in his pocket a resolution, which the Assembly of Virginia had come to, so late as on the 17th of December last. The resolution was as follows: 'That all demands or requests of the British court for the restitution of property confiscated by this State, being neither supported by law, equity or policy, are wholly inadmissible; and that our Delegates in Congress be instructed to move Congress, that they may direct their deputies, who shall represent these States in the General Congress for adjusting a peace or truce, neither to agree to any such restitution, or submit that the laws made by any independent State in this Union be subjected to the adjudication of any power or powers on earth.' " *Ib., pages 62, 63.*

Some of the Speakers seem to have had no very accurate ideas of our government. All of them however have perfectly understood that a *recom-*

mendation was a matter, not of obligation or coercion, but of persuasion and influence, merely. They appear to have entertained greater or less degrees of hope or doubt as to its effect on the legislatures, and, tho willing to see the result of this chance, yet if it failed, they were prepared to take the work of indemnification on themselves.

§ 8. The agreement then being only that Congress should *recommend* to State legislatures a restitution of estates and liberty to remain a twelvemonth for the purpose of soliciting the restitution and to recommend a revision of all acts regarding the premises, Congress did immediately on the rect. of the Definitive Articles, to wit, on the 14th of January 1784 come to the following resolution vizt.

"Resolved unanimously, nine States being present, That it be, and it is hereby earnestly recommended to the legislatures of the respective States to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects; and also of the estates, rights and properties of persons resident in districts, which were in the possession of his Britannick Majesty's arms, at any time between the 30th day of November 1782, and the 14 day of January 1784, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights

and properties as may have been confiscated: And it is also hereby earnestly recommended to the several states, to reconsider and revise all their acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace should universally prevail; And it is hereby also earnestly recommended to the several States, that the estates, rights, and properties of such last mentioned persons should be restored to them, they refunding to any persons who may be now in possession the *bona fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties since the confiscation.

"Ordered, that a copy of the proclamation of this date, together with the recommendation, be transmitted to the several States by the Secretary."

§ 9. The British negotiators had been told by ours that all the States would refuse to comply with this recommendation—one only however refused altogether. The others complied in a greater or less degree, according to the circumstances and dispositions in which the events of the war had left them, but had all of them refused, it would have been no violation of the V^th^ Article, but an exercise of that freedom of will, which was reserved to them, and so understood by all parties.

The following are the Acts of our catalogue which belong to this head, with such short observations as are necessary to explain them; beginning at that

end of the Union, where the war having raged most, we shall meet with the most repugnance to favor:

§ 10. *Georgia.* [B. 7.] 1783. July 29. An act releasing certain persons from their bargains. A law had been passed during the war, to wit in 1782 [A. 30.] confiscating the estates of persons therein named, and directing them to be sold. They were sold; but some misunderstanding happened to prevail among the purchasers as to the mode of payment. This act of 1783 therefore, permits such persons to relinquish their bargains and authorizes a new sale—the lands remaining confiscated under the law made previous to the peace.

[B. 4.] 1785 Feb. 22. An act to authorize the auditor to liquidate the demands of such persons as have claims against the confiscated Estates. In the same law of confiscations made during the war, it had been provided that the estates confiscated should be subject to pay the debts of their former owner. This law of 1785 gave authority to the auditor to settle with, and pay the creditors, and to sell the remaining part of the estate confiscated as before.

[B. 8.] 1787 Feb. 10. An act to compel the settlement of public accounts for inflicting penalties and vesting the auditor with certain powers. This law also is founded on the same confiscation law of 1782, requiring the auditor to press the settlement with the creditors, &c.

[C. 3.] 1785 Feb. 7. An act for ascertaining the rights of aliens, and pointing out the mode for the admission of citizens. It first describes what

persons shall be free to become citizens, and then declares none shall be capable of that character who had been named in any confiscation law, or banished, or had borne arms against them. This act does not prohibit either the refugees, or real British subjects from coming into the state to pursue their lawful affairs. It only excludes the former from the right of citizenship, and, it is to be observed, that this recommendatory article does not say a word about giving them a right to become citizens. [If the policy of Great Britain has certainly not been to negotiate a right for her inhabitants to migrate into these states and become citizens.][1]

If the conduct of Georgia should appear to have been peculiarly uncomplying, it must be remembered that that State had peculiarly suffered; that the British army had entirely overrun it; had held possession of it for some years; and that all the inhabitants had been obliged either to abandon their estates and fly their country, or to remain in it under a military government.

§ 11. *South Carolina.* [A. 31.] 1783, Augt. 15. An act to vest 180 acres of land late the property of James Holmes in certain persons in trust for the benefit of a public school. These lands had been confiscated during the war. They were free to restore them, or to refuse. They did the latter and applied them to a public purpose.

[B. 5.] 1784, Mar. 26. An ordinance for amending and explaining the confiscation act. These lands had been confiscated and sold during the war. The

[1] Portion in [ ] struck out in original.

present law prescribes certain proceedings as to the purchasers, and provides for paying the debts of the former proprietors.

[B. 6.] 1786 Mar. 22. An act to amend the confiscation act and for other purposes therein mentioned. This relates only to estates which had been confiscated before the peace. It makes some provision towards a final settlement, and relieves a number of persons from the amercements which had been imposed on them during the war for the part they had taken.

[C. 9.] 1784 Mar. 26. An act restoring to certain persons their estates, and permitting the said persons to return, and for other purposes. This act recites that certain estates had been confiscated, and the owners 124 in number banished by former law,— That Congress had earnestly recommended in the terms of the treaty, it therefore distributes them into three lists or classes, restoring to all of them the lands themselves, where they remained unsold, and, the price, when sold: requiring from those in lists No. 1, & 3, to pay 12 p Cent on the value of what was restored, and No. 2, nothing; and it permits all of them to return, only disqualifying those of No. 1. & 3. who had borne military commissions against them, for holding any office for seven years.

[Doc$^{t.}$ No. 44.] Governor Moultrie's letter of June 21, 1786, informs us that most of the confiscations had been restored; that the value of those not restored, was far less than that of the property of their citizens carried off by the British; and that

fifteen instead of twelve months had been allowed to the persons for whom permission was recommended to come and solicit restitution.

§ 12. *North Carolina.* [B. 3.] 1784. Oct. An act directing the sale of confiscated property.

[B. 2.] 1785 Dec. 29. An act to secure and quiet in their possessions the purchasers of lands, goods &c. sold or to be sold by the commissioners of forfeited estates.

These two acts relate expressly to the property "heretofore confiscated," and secure purchasers under those former confiscations.

[No. 54 D. 11.] 1790. The case of Bayard *v.* Singleton adjudged in a court of judicature in North Carolina. Bayard was a purchaser of part of an estate confiscated during the war, and the Court adjudged his title valid, and it is difficult to conceive on what principle that adjudication can be complained of as an infraction of the treaty.

1785, Nov. 19. An act was passed to restore a confiscated estate to the former proprietor, Edward Bridgen.

[C. 7.] 1784 Oct. An act to describe and ascertain such persons as owed allegiance to the state, and impose certain disqualifications on certain persons therein named.

[C. 8.] 1785, Nov. An act to amend the preceding act.

[C. 1] 1788 Apr. An act of pardon and oblivion. The two first of these acts exercised the right of the state to describe who should be its citizens, and who should be disqualified from holding offices. The

last, entitled an act of pardon and oblivion, I have not been able to see; but so far as it pardons, it is a compliance with the recommendation of Congress under the treaty, and so far as it excepts persons out of the pardon, it is a refusal to comply with the recommendation, which it had a right to do. It does not appear that there has been any obstruction to the return of those persons who had claims to prosecute.

§ 13. *Virginia.* The catalogue under examination presents no act of this State subsequent to the treaty of peace on the subject of confiscations. By one of October 18, 1784, they declared there should be no future confiscations. [No. 13.] But they did not chuse to comply with the recommendation of Congress as to the restoration of property which had been already confiscated; with respect to persons, the first assembly which met after the peace, passed—

[C. 5.] 1783, Oct. The act prohibiting the migration of certain persons to this commonwealth, and for other purposes therein mentioned, which was afterwards amended by—

[C. 6.] 1786 Oct. An act to explain and amend the preceding.

These acts after declaring who shall have a right to migrate to, or become citizens of the state, have each an express proviso that *nothing contained in them shall be so construed as to contravene the treaty of peace with Great Britain*—and a great number of the refugees having come into the state under the protection of the first law, and it being understood that a party was forming in the State to ill-treat them,

the Governor, July 26, 1784, published the proclamation [No. 14.] enjoining all magistrates and other civil officers to protect them, and secure to them the rights derived from the treaty and acts of assembly aforesaid, and to bring to punishment all who should offend herein, in consequence of which those persons remained quietly in the state, and many of them have remained to this day.

§ 14. *Maryland.* [B. 9.] 1785. Nov. An act to vest certain powers in the Governor and Council. Sect. 3.

[B. 10.] 1788 Nov. An act to empower the Governor and Council to compound with the discoveries of British property, and for other purposes. These acts relate purely to property which had been confiscated during the war; and the state not choosing to restore it as recommended by Congress, passed them for bringing to a conclusion the settlement of all transactions relative to the confiscated property.

I do not find any law of this state which could prohibit the free return of their refugees, or the reception of the subjects of Great Britain or of any other country. And I find that they passed in

1786, Nov. An act to repeal that part of the act for the security of their government which disqualified non jurors from holding offices and voting at elections.

[D. 11.] 1790. The case of Harrison's representatives in the Court of chancery of Maryland is in the list of infractions. These representatives being British subjects, and the laws of this country like those of England, not permitting aliens to hold

lands, the question was whether British subjects were aliens. They decided that they were, consequently, that they could not take lands, and consequently also, that the lands in this case escheated to the state. Whereupon the legislature immediately interposed and passed a special act allowing the benefits of the succession to the representatives. [19] But had they not relieved them, the case would not have come under the treaty, for there is no stipulation in that doing away the laws of alienage and enabling the members of each nation to inherit or hold lands in the other.

§. 15. *Delaware.* This state in the year 1778 passed an act of confiscation against 46 citizens by name who had joined in arms against them, unless they should come in by a given day and stand their trial. The estates of those who did not, were sold, and the whole business soon closed. They never passed any other act on the subject, either before or after the peace. There was no restitution, because there was nothing to restore, their debts having more than exhausted the proceeds of the sales of their property as appears by Mr. Read's letter and that all persons were permitted to return, and such as chose it have remained there in quiet to this day. [No. 15].

§. 16. *Pennsylvania.* §: The catalogue furnishes no transaction of this state subsequent to the arrival of the treaty of peace, on the subject of confiscation except 1790, August [C. 15]: An order of the Executive council to sell part of Harry Gordon's real estate, under the act of Jany. 31. 1783. This person had been summoned by Proclamation, by the name of

Henry Gordon, to appear before the 1st day of November 1781, and, failing, his estate was seized by the commissioners of forfeitures, and most of it sold. The act of 1783, Jany. 31, cured the misnomer, and directed what remained of his estate to be sold. The confiscation being complete, it was for them to say whether they would restore it in compliance with the recommendation of congress [No. 16]. They did not, and the Executive completed the sale as they were bound to do. All persons were permitted to return to this State, and you see many of them living here to this day in quiet and esteem.

§. 17. *New Jersey.* The only act alleged against this state as to the recommendatory Article, is

[A. 33.] 1783. Dec. 23, An act to appropriate certain forfeited estates. This was the estate of John Zabriski, which had been forfeited during the war, and the act gives it to Major General Baron Steuben, in reward for his services. The confiscation being complete, the legislature were free to do this. [No. 41.] Governor Livingston's letter, is an additional testimony of the moderation of this state after the proclamation of peace, and from that we have a right to conclude that no persons were prevented from returning and remaining indefinitely.

§. 18. *New York.* This state had been among the first invaded, the greatest part of it had been possessed by the enemy through the war, it was the last evacuated, it's inhabitants had in great numbers been driven off their farms, their property wasted, and themselves living in exile and penury, and reduced from affluence to want, it is not to be

wondered at if their sensations were among the most lively—accordingly they in the very first moment gave a flat refusal to the recommendation, as to the restoration of property. See document No. 17. containing their reasons. They passed however the act to preserve the freedom and independence of this state, and for other purposes therein mentioned, in which, after disqualifying refugees from offices, they permit them to come and remain as long as may be absolutely necessary to defend their estates.

§. 19. *Connecticut.* A single act only on the same subject is alleged against this state after the treaty of peace. This was

[A. 5.] 1790. An act directing certain confiscated estates to be sold. The title shews they were old confiscations, not new ones, and Governor Huntington's letter informs us that all confiscations and prosecutions were stopped on the peace, that some restorations of property took place and all persons were free to return. [No. 18.]

§. 20. *Rhode Island.* The titles of 4. acts of this state are cited in your appendix, to wit:

1783, May 27, An act to send out of the State N. Spink and I. Underwood who had formerly joined the enemy and were returned to Rhode Island. [C. 11]

1783, June 8. An act to send Wm Young theretofore banished out of the state and forbidden to return at his peril. [C. 12]

1783, June 12, An act allowing Wm Brenton late an absentee, to visit his family for one week, then sent away not to return. [C. 13]

1783, Oct, An act to banish S. Knowles (whose

estate had been forfeited), on pain of death if he return. Mr. Channing, the attorney of the United States for that district, says in his letter, [Doc^{t} No. 19] he had sent me all the acts of that legislature that affect either the debts or the persons of British subjects, or American refugees. [C. 14] The acts above cited are not among them. In the answer of April 6, which you were pleased to give to mine of March 30, desiring copies of these among other papers, you say the book is no longer in your possession. These circumstances will I hope, excuse my not answering or admitting these acts, and justify my proceeding to observe that nothing is produced against this state on the subject after the treaty; and the District attorney's letter before cited informs us that their courts considered the treaty as paramount to the laws of the state, and decided accordingly both as to persons and property, and that the estates of all British subjects seized by the State had been restored and the rents and profits accounted for. Governor Collins' letter [No. 20.] is a further evidence of the compliance of this state.

§. 21. *Massachusetts.* 1784, Mar. 24. This State passed an act for repealing two laws of this State and for asserting the right of this free and sovereign commonwealth to expel such aliens as may be dangerous to the peace and good order of Government, the effect of which was to reject the recommendation of Congress as to the return of persons, but to restore to them such of their lands as were not confiscated, unless they were pledged for debt and by [C. 2]

1784, Nov. 10. An act in addition to an act for

repealing two laws of this state, they allowed them to redeem their lands pledged for debt, by paying the debt. [B. 1]

§. 22. *New Hampshire.* Against New Hampshire nothing is alleged, that State having not been invaded at all, was not induced to exercise any acts of rigor against the subjects of adherents of their enemies.

The acts then which have been complained of as violations of the V^th^ Article, were such as the States were free to pass notwithstanding the recommendation, such as it was well understood they would be free to pass without any imputation of infraction and may therefore be put entirely out of question.

§. 23. And we may further observe with respect to the same Acts, that they have been considered as infractions not only of the V^th^ Article, which recommended the restoration of the confiscations which *had taken place during the war*, but also of that part of the VI^th^ Article which forbade *future* confiscations, but not one of them touched an estate which had not been before confiscated, for you will observe,[1] that an act of the Legislature, confiscating lands, stands in place of *an office found* in ordinary cases; and that, *on the passage of the act*, as *on the finding of the office*, the State stands, *ipso facto*, possessed of the lands, without a formal entry. The confiscation then is complete by the passage of the act. Both the title and possession being divested out of the former proprietor, and vested in the State, no subsequent proceedings relative to the lands are acts of

[1] Blackstone. *T. J.*

confiscation, but are mere exercises of ownership, whether by levying profits, conveying for a time, by lease, or in perpetuo, by an absolute deed. I believe therefore it may be said with truth that there was not a single confiscation made in any one of the United States, after notification of the treaty: & consequently it will not be necessary to notice again this part of the VIth Article.

§ 24. Before quitting the Recommendatory article, two passages in the letter are to be noted, which applying to all the states in general could not have been properly answered under any one of them in particular. In page 16. is the following passage. "The express provision in the treaty for the restitution of the estates and properties of persons of both these descriptions [British subjects, and Americans who had staied within the British lines, but had not borne arms] certainly comprehended a virtual acquiescence in their right to reside where their property was situated, & to be restored to the privileges of citizenship." Here seems to be a double error; first in supposing an *express* provision; whereas the words of the article & the collateral testimony adduced have shewn that the provision was neither *express*, nor meant to be so: and secondly, in inferring from a restitution of the estate, a virtual acquiescence in the right of the party to reside where the estate is. Nothing is more frequent than for a sovereign to banish the person & leave him possessed of his estate. The inference in the present case too is contradicted as to the *refugees* by the recommendation to permit their residence twelve

months; & as to British subjects, by the silence of the article, & the improbability that the British Plenipotentiary meant to stipulate a right for British subjects to emigrate & become members of another community.—

§ 25. Again in pa. 34, it is said, "The nation of Gr. Britain has been involved in the payment to them of no less a sum than four million sterling, as a partial compensation for the losses they had sustained." It has been before proved that Mr. Oswald understood perfectly that no indemnification was claimable from us; that, on the contrary, we had a counterclaim of indemnification to much larger amount: it has been supposed, & not without grounds, that the glimmering of hope provided for by the recommendatory article, was to quiet for the present the clamours of the sufferers, & to keep their weight out of the scale of opposition to the peace, trusting to time & events for an oblivion of these claims, or for a gradual ripening of the public mind to meet and satisfy them at a moment of less embarrassment: the latter is the turn which the thing took. The claimants continued their importunities & the government determined at length to indemnify them for their losses: and open-handedly as they went to work, it cost them less than to have settled with us the just account of mutual indemnification urged by our Commissioners. It may be well doubted whether there were not single states of our union to which the four millions you have paid, would have been no indemnification for the losses of property sustained contrary even to the

laws of war; and what sum would have indemnified the whole thirteen, and, consequently, to what sum our whole losses of this description have amounted, would be difficult to say. However, tho' in nowise interested in the sums you thought proper to give to the refugees, we could not be inattentive to the measure in which they were dealt out. Those who were on the spot, & who knew intimately the state of affairs with the individuals of this description, who knew that their debts often exceeded their possessions, insomuch that the most faithful administration made them pay but a few shillings in the pound, heard with wonder of the sums given, and could not but conclude that those largesses were meant for something more than loss of property—that services & other circumstances must have had great influence. The sum paid is therefore no imputation on us. We have borne our own losses. We have even lessened yours by numerous restitutions where circumstances admitted them; and we have much the worse of the bargain by the alternative you chose to accept, of indemnifying your own sufferers, rather than ours.

§ 26. II. The article of Debts is next in order: but, to place on their true grounds, our proceedings relative to them, it will be necessary to take a view of the British proceedings which are the subject of complaint in my letter of Dec. 15.

In the VIIth article it was stipulated that his Britannic majesty should withdraw his armies, garrisons & fleets, without carrying away any negroes or other property of the American inhabitants. This

stipulation was known to the British commanding officers before the 19th of Mar. 1783, as *provisionally* agreed, & on the 5th of April they received official notice from their court of the conclusion & ratification of the preliminary articles between France, Spain & Great Britain, which gave activity to ours, as appears by the letter of Sir Guy Carleton to Genl Washington dated Apr. 6. 1783. [Document No. 21.] From this time then surely no negroes could be carried away without a violation of the treaty. Yet we find that, so early as the 6th of May a *large* number of them had already been embarked for Nova Scotia, of which, as contrary to an express stipulation in the treaty, Genl Washington declared to him his sense & his surprise. In the letter of Sir Guy Carleton of May 12 (annexed to mine to you of the 15th of Dec) he admits the fact, palliates it by saying he had no right "to deprive the negroes of that liberty he found them *possessed* of, that it was unfriendly to suppose that the king's minister could stipulate to be guilty of a notorious breach of the public faith towards the negroes, & that *if it was his intention, it must be adjusted by compensation*, restoration being utterly impracticable, where inseparable from a breach of public faith." But surely, Sir, an officer of the king is not to question the validity of the king's engagements, nor violate his solemn treaties, on his own scruples about the public faith. Under this pretext however, Genl Carleton went on in daily infractions, embarking from time to time, between his notice of the treaty and the 5th of April, & the evacuation of New York Nov. 25th, 3000.

negroes, of whom our Commissioners had inspection, and a very large number more, in public & private vessels, of whom they were not permitted to have inspection. Here then was a direct, unequivocal, & avowed violation of this part of the VIIth article, in the first moments of its being known; an article which had been of extreme solicitude on our part; on the fulfilment of which depended the means of paying debts, in proportion to the number of labourers withdrawn: and when in the very act of violation we warn, & put the Commanding officer on his guard, he says directly he will go through with the act, & leave it to his court to adjust it by compensation.

§ 27. By the same article, his Britannic Majesty stipulates that he will, *with all convenient speed*, withdraw his garrisons from *every* post within the U. S. "When no precise term, says a writer on the law of nations [Vattel, l. 4. c. 26.], has been marked for the accomplishment of a treaty, & for the execution of each of it's articles, good sense determines that every point should be executed *as soon as possible:* this is without doubt what was understood."[1] The term in the treaty, *with all convenient speed*, amounts to the same thing, & clearly excludes all unnecessary delay. The general pacification being signed on the 20th of January some time would be requisite for the orders for

[1] "Lorsqu'on n'a point marqué de terme pour l'accomplissement du traité, et pour l'execution de chacun des articles, le bon sens dit que chaque point doit être executé *aussitôt qu'il est possible.* C'est sans doute ainsi qu'on l'a entendu."—*T. J.*

evacuation to come over to America, for the removal of stores, property, & persons; & finally for the act of evacuation. The larger the post, the longer the time necessary to remove all it's contents; the smaller the sooner done. Hence tho' Genl Carleton received his orders to evacuate New York in the month of April, the evacuation was not completed till late in November. It had been the principal place of arms & stores; the seat, as it were, of their general government, & the asylum of those who had fled to them. A great quantity of shipping was necessary therefore for the removal, & the General was obliged to call for a part from foreign countries. These causes of delay were duly respected on our part. But the posts of Michillimackinac,[1] Detroit, Niagara, Oswego, Oswegatchie, Point au Fer, Dutchman's point were not of this magnitude. The orders for evacuation, which reached Genl Carleton, in New York, early in April, might have gone, in one month more, to the most remote of these posts: some of them might have been evacuated in a few days after, & the largest in a few weeks. Certainly they might all have been delivered, without any *inconvenient speed* in the operations, by the end of May, from the known facility furnished by the lakes, & the water connecting them; or by crossing immediately over into their own territory, & availing themselves of the season for making new establishments there, if that was intended. Or whatever time might, in event, have been necessary for their evacuation,

[1] Instead of this, Fort Erie was by error inserted in my letter of Decr 15.—*T. J.*

certainly the order for it should have been given from England, and might have been given as early as that for New York. Was any order ever given? Would not an *unnecessary delay* of the order, producing an equal delay in the evacuation, be an infraction of the treaty?—Let us investigate this matter.

On the 3d of Aug, 1783, Majr-Genl Baron Steuben, by orders from Genl Washington, having repaired to Canada for this purpose, wrote the letter [No. 22] to Genl Haldimand, Governor of the province, & received from him the answer of Aug. 13, [No. 23.] wherein he says "the orders I have received direct a discontinuance of every hostile measure *only*, &c." And, in his conference with Baron Steuben, he says expressly "that he *had not received any orders* for making the least arrangement for the evacuation of a single post." The orders then which might have been with him by the last of April, were unknown, if they existed, the middle of August. See Baron Steuben's letter [No. 24.]

Again on the 19th of Mar. 1784, Governor Clinton of New York, within the limits of which state some of these posts are, writes to Genl Haldimand the letter [No. 25], and that General, answering him May 10, from Quebec, says, "not having had the honor *to receive orders* & instructions relative to withdrawing the garrisons &c.": fourteen months were now elapsed, and the *orders not yet received* which might have been received in four. [No. 26.]

Again on the 12th of July, Colo Hull, by order from Genl. Knox the Secretary at War, writes to Genl Haldimand, the letter [No. 27,] and General

Haldimand gives the answer of the 13th, [No. 28,] wherein he says "Tho' I am now informed by his Majesty's ministers of the ratification &c. I remain &c. *not having received any orders* to evacuate the posts which are without the limits &c." And this is eighteen months after the signature of the general pacification! Now, is it not fair to conclude, if the order was not arrived on the 13th of Aug. 1783, if it was not arrived on the 10th of May 1784 nor yet on the 13th of July in the same year that in truth the order had never been given? and if it had never been given, may we not conclude that it never had been intended to be given? From what moment is it we are to date this infraction? From that at which with convenient speed, the order to evacuate the upper posts might have been given. No legitimate reason can be assigned why that order might not have been given as early, & at the same time as the order to evacuate New York: and *all delay after this was in contravention of the treaty.*

§ 28. Was this delay merely innocent & unimportant as to us, setting aside all consideration but of interest & safety? 1. It cut us off from the Fur-trade, which, before the war, had been always of great importance as a branch of commerce, & as a source of remittance for the payment of our debts to Great Britain; for to the injury of withholding our posts, they added the obstruction of all passage along the lakes & their communications. 2. It secluded us from connection with the Northwestern Indians, from all opportunity of keeping up with them friendly & neighborly intercourse, brought on

us consequently, from their known dispositions, constant & expensive war, in which numbers of men, women & children, have been, and still are daily falling victims to the scalping knife; & to which there will be no period, but in our possession of the posts, which command their country.

It may safely be said then that the treaty was violated *in England*, before it was known in America; and *in America*, as soon as it was known; & that too in points so essential, as that, without them, it would never have been concluded.

§ 29. And what was the effect of these infractions on the American mind?—On the breach of any article of a treaty by the one party, the other has it's election to declare it dissolved in all it's articles, or to compensate itself by withholding execution of equivalent articles; or to waive notice of the breach altogether.

Congress being informed that the British commanding officer was carrying away the negroes from New York, in avowed violation of the treaty, and against the repeated remonstrances of Genl Washington, they take up the subject on the 26th of May, 1783. they declare that it is contrary to the treaty, direct that the proper papers be sent to their Ministers Plenipotentiary in Europe to remonstrate & demand reparation, and that, in the meantime, Genl Washington continue his remonstrances to the British commanding officer, & insist on the discontinuance of the measure. [See document No. 29.]

§ 30. The state of Virginia, materially affected by this infraction, because the labourers thus carried

away were chiefly from thence, while heavy debts were now to be paid to the very nation which was depriving them of the means, took up the subject in Dec 1783, that is to say, 7. months after that particular infraction, and 4. months after the first refusal to deliver up the posts, and, instead of arresting the debts absolutely, in reprisal, for their negroes carried away, they passed [D. 5.] the act to revive & continue the several acts for suspending the issuing executions on certain judgments until Dec 1783. that is to say, they revived till their next meeting, two acts passed during the war, which suspended all *voluntary & fraudulent* assignments of debt, and, as to *others*, allowed real & personal estate to be tendered in discharge of executions: the effect of which was to relieve the body of the debtor from prison, by authorizing him to deliver property in discharge of the debt.—In June following, 13. months after the violation last mentioned, & after a *second refusal* by the British commanding officer to deliver up the posts, they came to the resolution [No. 30.] reciting specially the infraction respecting their negroes, instructing their delegates in Congress to press for reparation; & resolving that the courts shall be opened to British suits, *as soon as reparation shall be made*, or otherwise *as soon as Congress shall judge it indispensably necessary.* And in 1787. they passed [E. 7.] the act to repeal so much of all & every act or acts of assembly as prohibits the recovery of British debts; & at the same time [E. 6.] the act to repeal part of an act for the protection & encouragement of the commerce of nations acknoleging the

independance of the U S of America. The former was not to be in force till the evacuation of the posts & reparation for the negroes carried away: the latter requires particular explanation.—The small supplies of European goods which reached us during the war, were frequently brought by Captains of vessels & supercargoes, who, as soon as they had sold their goods, were to return to Europe with their vessels. To persons under such circumstances, it was necessary to give a summary remedy for the recovery of the proceeds of their sale. This had been done by the law for the protection & encouragement of the commerce of nations acknoleging the independance of the U S. which was meant but as a temporary thing to continue while the same circumstances continued. On the return of peace, the supplies of foreign goods were made, as before the war, by merchants resident here. There was no longer reason to continue to them the summary remedy which had been provided for the transient vender of goods: and indeed it would have been unequal to have given the resident merchant instantaneous judgment against a farmer or tradesman while the farmer or tradesman could pursue those who owed him money, but in the ordinary way, & with the ordinary delays. The British creditor had no such unequal privilege while we were under British government, and had no title to it in justice, or by the treaty, after the war. When the legislature proceeded then to repeal the law as to other nations, it would have been extraordinary to have continued it for Great Britain.

§ 31. South Carolina was the second state which

moved in consequence of the British infractions, urged thereto by the desolated condition in which their armies had left that country, by the debts they owed, & the almost entire destruction of the means of paying them. They passed [D. 7. 20.] 1784 Mar 26, An Ordinance respecting the recovery of debts, suspending the recovery of all actions, as well American as British, for 9. months, & then allowing them to recover payment at four equal and annual instalments only, requiring the debtor in the meantime to give good security for his debt, or otherwise refusing him the benefit of the act, by

[D. 21.] 1787. Mar. 28, an act to regulate the recovery & payment of debts, & prohibiting the importation of negroes, they extended the instalments a year further, in a very few cases.—I have not been able to procure the two following acts [D. 14.] 1785. Oct. 12, An act for regulating sales under executions, & for other purposes therein mentioned: and

[D. 22.] 1788. Nov. 4, An act to regulate the payment & recovery of debts, & to prohibit the importation of negroes for the time therein limited; & I know nothing of their effect, or their existence, but from your letter, which says their effect was to deliver property in execution in relief of the body of the debtor, & still further to postpone the instalments. If, during the existence of material infractions on the part of Great Britain, it were necessary to apologize for these modifications of the proceedings of the debtor, grounds might be found in the peculiar distresses of that state, and the liberality with which they had complied with the recommend-

atory articles, notwithstanding their sufferings might have inspired other dispositions, having pardoned everybody, received everybody, restored all confiscated lands not sold, & the prices of those sold.

§. 32. Rhode island next acted on the British infractions and imposed modifications in favor of such debtors as should be pursued by their creditors, permitting them to relieve their bodies from execution by the payment of paper money, or delivery of property. This was the effect of [D. 12.] 1786, Mar. An act to enable any debtor in jail, on execution, at the suit of any creditor, to tender real, or certain specified articles of personal estate, and

[D. 16.] 1786. May. An act making paper money a legal tender. But observe that this was not till *three years* after the infractions by Great Britain, & repeated & constant refusals of compliance on their part.

§. 33. New Jersey did the same thing by:

[D. 13.] 1786. Mar 23. An act to direct the modes of proceedings on writs on *fieri facias* & for transferring lands & chattels for paiment of debts, and

[D. 18.] 1786. May 26. An act for striking & making current 100,000£ in bills of credit to be let out on loan, and

[D. 17.] 1786. June 1. An act for making bills emitted by the act for raising a revenue of £31,259-5 per annum, for 25. years legal tender, and

§. 34. Georgia by [D. 19.] 1786. August 14. An act for emitting the sum of £50,000 in bills of credit, & for establishing a fund for the redemption, & for

other purposes therein mentioned, made paper money also a legal tender.

These are the only states which appear, by the acts cited in your letter, to have modified the recovery of Debts. But I believe that North Carolina also emitted a sum of paper money, & made it a tender in discharge of executions: though, not having seen the act, I cannot affirm it with certainty.— I have not mentioned, because I do not view the act of Maryland [D. 15.] 1786. Nov. c. 29. for the settlement of public accts. &c. as a modification of the recovery of debts. It obliged the British subject before he could recover what was due to him within the state, to give bond for the payment of what he owed therein. It is reasonable that every one, who asks justice, should do justice: and it is usual to consider the property of a foreigner in any country as a fund appropriated to the payment of what he owes in that country exclusively. It is a care which most nations take of their own citizens, not to let the property which is to answer their demands, be withdrawn from it's jurisdiction, and send them to seek it in foreign countries, and before foreign tribunals.

§. 35. With respect to the obstacles thus opposed to the British creditor, besides their general justification, as being produced by the previous infractions on the part of Great Britain, each of them admits of a special apology. They are 1. Delay of judgment. 2. Liberating the body from execution on the delivery of property. 3. Admitting executions to be discharged in paper money. As to the 1st, let it be considered that from the nature of the commerce

carried on between these states and Great Britain, they were generally kept in debt: that a great part of the country, & most particularly Georgia, S. Carolina, N. Carolina, Virginia, New York, & Rhode island had been ravaged by an enemy, movable property carried off, houses burnt, lands abandoned, the proprietors forced off into exile & poverty. When the peace permitted them to return again to their lands, naked and desolate as they were, was instant payment practicable? The contrary was so palpable, that the British creditors themselves were sensible that were they to rush to judgment immediately against their debtors, it would involve the debtor in total ruin, without relieving the creditor. It is a fact, for which we may appeal to the knowlege of one member at least of the British administration of 1785, that the chairman of the North American merchants, conferring on behalf of those merchants with the American ministers then in London, was so sensible that time was necessary as well to save the creditor as debtor, that he declared there would not be a moment's hesitation on the part of the creditors, to allow paiment by instalments annually for 7 years; & that this arrangement was not made, was neither his fault nor ours.

To the necessities for some delay in the payment of debts may be added the British commercial regulations lessening our means of payment, by prohibiting us from carrying in our own bottoms our own produce to their dominions in our neighborhood, and excluding valuable branches of it from their home markets by prohibitory duties. The means of

paiment constitute one of the motives to purchase, at the moment of purchasing. If these means are taken away by the creditor himself, he ought not in conscience to complain of a mere retardation of his debt, which is the effect of his own act, & the least injurious of those it is capable of producing. The instalment acts before enumerated have been much less general, & for a shorter term, than what the chairman of the American merchants thought reasonable. Most of them required the debtor to give security in the meantime, to his creditor, & provided complete indemnification of the delay by the paiment of interest which was enjoined in every case.

§ 36. The 2^{d} species of obstacle, was the admitting the debtor to relieve his body from imprisonment by the delivery of lands or goods to his creditor. And is this idea original, and peculiar to us? or whence have we taken it? From England, from Europe, from natural right & reason: for it may be safely affirmed that neither natural right nor reason subjects the body of a man to restraint for debt. It is one of the abuses introduced by commerce & credit, & which even the most commercial nations have been obliged to relax, in certain cases. The Roman law, the principles of which are the nearest to natural reason of those of any municipal code hitherto known, allowed imprisonment of the body in criminal cases only, or those wherein the party had expressly submitted himself to it. The French laws allow it only in criminal or commercial cases. The laws of England, in certain descriptions of cases (as bankruptcy) release the body. Many of the U. S.

do the same, in all cases, on a cession of property by the debtor. The *levari facias*, an execution affecting only the *profits of lands*, is the only one allowed in England in certain cases. The *Elegit*, another execution of that & this country, attaches first on a man's chattels, which are not to be sold, but to be *delivered to the pl.* on a *reasonable appraisement*, in part of satisfaction for his debt, & if not sufficient, one half only of his lands are then to be delivered to the pl. till the *profits* shall have satisfied him. The tender laws of these states were generally more favorable than the execution by *elegit*, because they not only gave, as that does, the whole property in chattels, but also *the whole property* in the lands, & not merely the *profits* of them. It is therefore an execution framed on the model of the English *Elegit* or rather an amendment of that writ, taking away indeed the election of the party against the *body* of his debtor, but giving him, in exchange for it, much more complete remedy against his *lands*.—Let it be observed too that this proceeding was allowed against citizens as well as foreigners; and it may be questioned whether the treaty is not satisfied while the same measure is dealt out to British subjects as to foreigners of all other nations, and to natives themselves. For it would seem that all a foreigner can expect is to be treated as a native citizen.

§ 37. The 3^{d} obstacle was the allowing paper money to be paid for goods sold under execution. The complaint on this head is only against Georgia, South Carolina, Jersey, & Rhode island; and this obstruction like the two others sprung out of the

peculiar nature of the war, for those will form very false conclusions, who reason, as to this war, from the circumstances which have attended other wars, & other nations. When any nation of Europe is attacked by another, it has neighbors with whom it's accustomary commerce goes on, without interruption; & it's commerce with more distant nations is carried on by sea in foreign bottoms at least under protection of the laws of neutrality. The produce of it's soil can be exchanged for money as usual, and the stock of that medium of circulation is not at all diminished by the war; so that property sells as readily & as well, for real money, at the close, as at the commencement of the war. But how different was our case: on the North & South were our enemies; on the West, desarts inhabited by savages in league with them: on the East an ocean of 1000. leagues, beyond which indeed were nations who might have purchased the produce of our soil, & have given us real money in Exchange, & thus kept up our stock of money, but who were deterred from coming to us by threats of war on the part of our enemies, if they should presume to consider us as a people entitled to partake of the benefit of that law of war, which allows commerce with neutral nations. What were the consequences? The stock of hard money which we possessed in an ample degree, at the beginning of the war, soon flowed into Europe for supplies of arms, ammunition and other necessaries, which we were not in the habit of manufacturing for ourselves. The produce of our soil, attempted to be carried in our own bottoms to Europe fell two thirds

of it into the hands of our enemies, who were masters of the sea, the other third illy sufficed to procure the necessary implements of war, so that no returns of money supplied the place of that which had gone off. We were reduced then to the resource of a paper medium, & that completed the exile of the hard money, so that, in the latter stages of the war, we were for years together without seeing a single coin of the precious metals in circulation. It was closed with a stipulation that we should pay a large mass of debt in such coin. If the whole soil of the U. S. had been offered for sale for ready coin, it would not have raised as much as would have satisfied this stipulation. The thing then was impossible; & reason & authority declare "Si l'empechement est reel, il faut donner du tems; car nul n'est tenu á l'impossible." Vattel, l. 4, § 51. We should with confidence have referred the case to the arbiter proposed by another Jurist, who lays it down that a party "Non ultra obligari, quam in quantum facere potest; et an possit, permittendum alterius principis, quo boni viri, arbitrio." Bynk. *Q. J. P.* l. 2, c. 10. § Quid. That four of the states should resort, under such circumstances, to very small emissions of paper money, is not wonderful; that all did not, proves their firmness under sufferance, and that they were disposed to bear whatever could be borne rather than contravene, even by way of equivalent, stipulations which had been authoritatively entered into for them. And even in the four states which emitted paper money, it was in such small sums, and so secured, as to suffer only a short lived and not great

depreciation of value; nor did they continue it's quality, as a tender, after the first paroxysms of distress were over.—Here too it is to be observed that natives were to receive this species of payment, equally with British subjects.

So that when it is considered that the other party had broken the treaty from the beginning, & that too in points which lessened our ability to pay their debts, it was a proof of the moderation of our nation to make no other use of the opportunity of retaliation presented to them, than to indulge the debtors with that time for discharging their debts which their distresses called for, & the interests & the reason of their creditors approved.

§ 38. It is to be observed that during all this time, Congress, who alone possessed the power of peace & war, of making treaties, & consequently of declaring their infractions, had abstained from every public declaration, & had confined itself to the resolution of May 26, 1783. and to repeated efforts, through their Minister plenipotentiary at the court of London, to lead that court into a compliance on their part, & reparation of the breach they had committed. But the other party now laid hold of those very proceedings of our states which their previous infractions had produced, as a ground for further refusal, & inverting the natural order of cause & effect, alledged that these proceedings of ours were the cause of the infractions which they had committed months & years before. Thus the British minister for foreign affairs, in his answer of Feb. 28. 1786. to Mr. Adams's memorial, says "The engage-

ments entered into by treaty ought to be mutual & equally binding on the respective contracting parties. It would therefore be the height of folly, as well as injustice, to suppose one party alone obliged to a strict observance of the public faith, while the other might remain free to deviate from it's own engagements, as often as convenience might render such deviation necessary, tho' at the expense of its own national credit & importance. I flatter myself however, Sir, that justice will speedily be done to British creditors, & I can assure you, Sir, that whenever America shall manifest a real intention to fulfill her part of the treaty, Great Britain will not hesitate to prove her sincerity to cooperate in whatever points depend upon her for carrying every article of it into real & complete effect." Facts will furnish the best commentary on this letter. Let us pursue them.

The Secretary for foreign affairs of the U. S. by order of Congress, immediately wrote circular letters to the Governors of the several states, dated May 3. 1786. [No. 31.] to obtain information how far they had complied with the proclamation of Jan. 14. 1784. & the recommendation accompanying it; & Apr. 13. 1787. Congress, desirous of removing every pretext which might continue to cloak the inexecution of the treaty, wrote a circular letter to the several states, in which, in order to produce more surely the effect desired, they demonstrate that Congress alone possess the right of interpreting, restraining, impeding, or counteracting the operation & execution of treaties, which on being constitutionally made, become, by the Confederation, a part of the law

of the land, & as such independant of the will & power of the legislatures: that, in this point of view, the state acts establishing provisions relative to the same objects, & incompatible with it, must be improper: resolving that all such acts now existing ought to be forthwith repealed, as well to prevent their continuing to be regarded as violations of the treaty, as to avoid the disagreeable necessity of discussing their validity; recommending, in order to obviate all future disputes & questions, that every state, as well those which had passed no such acts, as those which had, should pass an act, repealing, in general terms, all acts & parts of acts repugnant to the treaty, & encouraging them to do this, by informing them that they had the strongest assurances that an exact compliance with the treaty on our part, would be followed by a punctual performance of it on the part of Gr. Britain.

§ 39. In consequence of these letters N. Hampshire, Massachusets, Rhode island, Connecticut, New York, Delaware, Maryland, Virginia & N. Carolina passed the acts No. 32, 33, 34, 35, 36, 37, 38, 39, 40. New Jersey & Pennsylvania declared that no law existed with them repugnant to the treaty [see Documents 41, 42, 43.] Georgia had no law existing against the treaty. South Carolina indeed had a law existing, which subjected all persons foreign or native [No. 44.] to certain modifications of recovery and payment. But the liberality of her conduct on the other points is a proof she would have conformed in this also, had it appeared that the fullest conformity would have moved Gr. Britain to

compliance, & had an express repeal been really necessary.

§ 40. For indeed all this was supererogation. It resulted from the instrument of Confederation among the states that treaties made by Congress according to the Confederation were superior to the laws of the states. The circular letter of Congress had declared & demonstrated it, & the several states by their acts & explanations before mentioned had shewn it to be their own sense, as we may safely affirm it to have been the general sense of those, at least, who were of the profession of the law. Besides the proofs of this drawn from the act of Confederation itself, the declaration of Congress, and the acts of the states before mentioned, the same principle will be found acknoleged in several of the Documents hereto annexed for other purposes. Thus, in Rhode island, Governor Collins, in his letter, [No. 20.] says "The treaty, in all *its absolute parts*, has been fully complied with, & to those parts that are merely *recommendatory & depend upon the legislative discretion*, the most candid attention hath been paid." Plainly implying that the *absolute parts* did not *depend upon the legislative discretion*. Mr. Channing the attorney for the U. S. in that state, [No. 19.] speaking of an act passed before the treaty, says "This act was considered by our courts as *annulled by the treaty of peace*, & subsequent to the ratification thereof, no proceedings have been had thereon." The Governor of Connecticut in his letter [No. 18,] says "The VIth article of the treaty was immediately observed on receiving the same with the proclamation of Congress; the Courts of

justice adopted it as a *principle of law.* No further prosecutions were instituted against any person who came within that article, and all such prosecutions as were then pending were discontinued." Thus prosecutions, going on under a law of the state, were discontinued by the treaty operating as a repeal of the law. In Pennsylvania, Mr. Lewis, attorney for the U. S., says, in his letter [No. 60.] "The judges have uniformly, & without hesitation, declared in favor of the treaty, on account of it's being the supreme law of the land. On this ground, they have not only discharged attainted traitors from arrest, but have frequently declared that they were entitled by the treaty to protection." The case of the Commonwealth *v.* Gordon, Jan. 1788, Dallas's Rep. 233. is a proof of this. In Maryland in the case of Mildred *v.* Dorsey cited in your letter E. 4. a law of the state, made during the war, had compelled those who owed debts to British subjects to pay them into the treasury of that state. This had been done by Dorsey before the date of the treaty; yet the judges of the *State* General court decided that the treaty not only repealed the law for the future, but for the past also, & decreed that the def should pay the money over again to that British creditor. In Virginia, Mr. Monroe, one of the Senators of that state in Congress, and a lawyer of eminence tells us [No. 52.] that both court & counsel there avowed the opinion that the treaty would controul any law of the state opposed to it. And the legislature itself, in an act of Oct. 1787, c. 36. concerning monies carried into the public loan office, in payment of British debts, use these

expressions "and whereas it belongs not to the legislature to decide particular questions, of which the judiciary have cognizance, & it is therefore unfit for them to determine whether the payments so made into the loan office be good or void between the creditor & debtor." In New York Mr. Harrison, attorney for the U. S. in that district, assures us [No. 45.] that the act of 1782. of that state relative to the debts due to persons within the enemy's lines, was, immediately after the treaty, restrained *by the Superior courts of the state*, from operating on British creditors, & that he did not know a single instance to the contrary; a full proof that they considered the treaty as a law of the land, paramount to the law of their state.

§ 41. The very case of Rutgers v. Waddington [E. 8.] which is a subject of complaint in your letter, is a proof that the courts consider the treaty as paramount to the laws of the states. Some parts of your information as to that case have been inexact. The state of New York had, during the war passed an act [C. 16.] declaring that in any action by the proprietor of a house or tenement against the occupant for rent or damage, no military order should be a justification; and May 4, 1784. after the refusal of the British to deliver up the posts in the state of New York, that legislature revived the same act. [C. 19.] Waddington, a British subject had occupied a brew house in New York belonging to Rutgers, an American, while the British were in possession of New York. During a part of the time he had only permission from the Quartermaster

General; for another part he had an order of the Commanding officer to authorize his possession. After the evacuation of the city, Rutgers, under the authority of this law of the state, brought an action against Waddington for rent & damages, in the Mayor's court of New York. Waddington pleaded the treaty, and the court declared the treaty a justification, in opposition to the law of the state, for that portion of the time authorized by the commanding officer, his authority being competent: & gave judgment for that part, in favor of the defendant, but for the time he held the house under permission of the Quartermaster general only they gave judgment against the defendant, considering the permission of that officer as incompetent, according to the regulations of the existing power. From this part of the judgment the def. appealed. The first part however was an unequivocal decision of the superior authority of the treaty over the law. The latter part could only have been founded in an opinion of the sense of the treaty in that part of the VIth article which declares "there shall be no future prosecutions against any person for the part he may have taken in the war, and that no person should on that account suffer any future loss or damage in their property &c." They must have understood this as only protecting actions which were conformable with the laws & authority existing at the time & place. The tenure of the def. under the Quartermaster genl. was not so conformable. That under the commanding officer was. Some may think that murders and other crimes and offences characterized as such by

the authority of the time & place where committed, were meant to be protected by this paragraph of the treaty: and perhaps, for peace sake, this construction may be the most convenient. The Mayor's court however seems to have revolted at it. The def. appealed, & the question would have been authoritatively decided by the superior court, had not an amicable compromise taken place between the parties. See Mr. Hamilton's statement of this case [No. 46.]

§ 42. The same kind of doubt brought on the arrest of John Smith Hatfield in New Jersey, whose case [E. 9.] is another ground of complaint in your letter. A refugee sent out by the British, as a spy, was taken within the American lines, regularly tried by a court martial, found guilty & executed. There was one Ball, an inhabitant of the American part of Jersey, who, contrary to the laws of his country, was in the habit of secretly supplying the British camp in Staten island with provisions. The first time Ball went over, after the execution of the Spy, of which it does not appear he had any knolege, and certainly no agency in his prosecution, John Smith Hatfield, a refugee also from Jersey, & some others of the same description, seized him, against the express orders of the British commanding officer, brought him out of the British lines, & Hatfield hung him with his own hands. The British officer sent a message to the Americans disavowing this act, declaring that the British had nothing to do with it, & that those who had perpetrated the crime ought alone to suffer for it. The right to punish the guilty

individual seems to have been yielded by the one party & accepted by the other in exchange for that of retaliation on an innocent person; an exchange which humanity would wish to see habitual. The criminal came afterwards into the very neighborhood a member of which he had murdered. Peace indeed had now been made, but the magistrate thinking probably that it was for the honest soldier & citizen only, and not for the murderer, and supposing with the mayor's court of New York, that the paragraph of the treaty against future persecutions meant to cover authorized acts only, and not murders & other atrocities disavowed by the existing authority, arrested Hatfield. At the court which met for his trial, the witnesses failed to attend. The court released the criminal from confinement, on his giving the security required by law for his appearance at another court. He fled: and you say that "as his friends doubted the disposition of the court to determine according to the terms of the treaty, they thought it more prudent to suffer the forfeiture of the recognizances, than to put his life again into jeopardy." But your information in this, Sir, has not been exact. The recognizances are not forfeited. His friends, confident in the opinion of their counsel & the integrity of the judges, have determined to plead the treaty, & not even give themselves the trouble of asking a release from the legislature: & the case is now depending. See the letter of Mr. Boudinot, member of Congress for Jersey. [No. 47.]

§ 43. In Georgia, Judge Walton, in a charge to

a Grand Jury, says "The state of Rhode island having acceded to the Federal constitution, the Union & Government have become compleat.—To comprehend the extent of the General government, & to discern the relation between that & those of the states, will be equally our interest & duty. The Constitution, laws, & *treaties* of the Union are *paramount.*" [See Georgia *Gazette* Aug. 7. 1790.] And in the same state, in their last federal circuit court, we learn from the public papers that in a case wherein the plaintiffs were Brailsford & others, British subjects, whose debts had been sequestered (not confiscated) by an act of the state during the war, the judges declared the Treaty of peace a repeal of the act of the state, & gave judgmt for the pls.

§ 44. The integrity of those opinions & proceedings of the several courts should have shielded them from the insinuations hazarded against them. In pa 9. & 10. it is said "that, during the war the legislatures passed laws to confiscate the estates of the Loyalists to enable debtors to pay into the state treasuries paper money, then exceedingly depreciated in discharge of their debts." And pa 24. "The dispensations of law *by the state courts* have been as unpropitious to the subjects of the crown as the legislative acts of the different assemblies." Let us compare, if you please, Sir, these unpropitious opinions of our state courts with those of foreign lawyers writing on the same subject. "Quod dixi de actionibus recte publicandis ita demum obtinet, si quod subditi nostri hostibus nostris debent, princeps a subditus suis revera exegerit. Si exegerit,

recte solutum est; si non exegerit, pace facta, reviviscit jus pristinum creditoris"—"secundum hæc inter gentes fere convenit, ut nominibus bello publicatis, pace deinde factâ, exacta censeantur periisse, et maneant extincta; non autem exacta reviviscant et restuantur veris creditoribus." Bynk. *Quint. J. P.* l. 1, c. 7. But what said the judges of the state-court of Maryland in the case of Mildred & Dorsey? That a debt, forced from an American debtor into the treasury of his sovereign, is not extinct, but shall be paid over again by that debtor to his British creditor. Which is most propitious the unbiassed foreign Jurist, or the American judge charged with dispensing justice with favor & partiality? But from this you say there is an appeal. Is that the fault of the judge, or the fault of anybody? Is there a country on earth, or ought there to be one, allowing no appeal from the first errors of their courts? and if allowed from errors, how will those from just judgments be prevented? In England, as in other countries, an appeal is admitted to the party thinking himself injured, and here had the judgment been against the British creditor & an appeal denied, there would have been better cause of complaint than for not having denied it to his adversary. If an *illegal* judgment be ultimately rendered on the appeal, then will arise the right to question it's propriety.

§ 45. Again it is said pa 34. "In one state the *supreme federal court* has thought proper to suspend for many months the final judgment on an action of debt, brought by a British creditor." If by *the*

Supreme federal court be meant *the Supreme court of the U. S.* I have had their records examined in order to know what may be the case here alluded to; & I am authorized to say there neither does nor ever did exist any cause, before that court, between a British subject & a citizen of the U. S. See the certificate of the clerk of the court [No. 48.] If by *the Supreme federal court* be meant *one of the Circuit courts of the U. S.* then which circuit, in which state, & what case is meant? In the course of the inquiries I have been obliged to make to find whether there exists any case, in any district of any circuit court of the U. S. which might have given rise to this complaint, I have learned that an action was brought to issue & argued in the circuit court of the U. S. in Virginia at their last term, between Jones a British subject pl & Walker an American def. wherein the question was the same as in the case of Mildred & Dorsey, to wit, Whether a payment into the treasury, during the war, under a law of the state, discharged the debtor? One of the judges retiring from court in the midst of the argument, on the accident of the death of an only son, & the case being *primæ impressionis* in that court, it was adjourned for consideration till the ensuing term. Had the two remaining judges felt no motive but of predilection to one of the parties, had they considered only to which party their wishes were propitious, or unpropitious, they possibly might have decided that question on the spot. But, learned enough in their science to see difficulties which escape others, & having characters & consciences to satisfy, they followed the

example so habitually & so laudibly set by the courts of your country & of every country where law, & not favor, is the rule of decision, of taking time to consider. Time & consideration are favorable to the right cause, precipitation to the wrong one.

§ 46. You say again pa. 29. "The few attempts to recover British debts in the county courts of Virginia have *universally* failed; & these are the courts, wherein from the smallness of the sum, a considerable number of debts can only be recovered." And again pa. 34. "In the same state, county courts (which alone can take cognizance of debts of limited amount) have *uniformly rejected* all suits instituted for the recovery of sums due to the subjects of the crown of Gr Britain." In the 1st place, the county courts, till of late, have had exclusive jurisdiction only of sums below £10. and it is known that a very inconsiderable proportion of the British debt consists in demands below that sum. A late law, we are told, requires that actions below £30. shall be commenced in those courts; but allows at the same time an appeal to correct any errors into which they may fall. In the 2d place, the evidence of gentlemen who are in the way of knowing the fact [No. 52, 53,] is that tho' there have been accidental checks in some of the subordinate courts, arising from the chicanery of the debtors, & sometimes perhaps a moment of error in the court itself, yet these particular instances have been immediately rectified either in the same, or the superior court, while the great mass of suits for the recovery of sums due to

the subjects of the crown of Gr Britain have been uniformly sustained to judgment and execution.

§ 47. A much broader assertion is hazarded pa 29. "In some of the Southern states, there does not exist a single instance of the recovery of a British debt in their courts, tho' many years have expired since the establishment of peace between the two countries." The particular states are not specified. I have therefore thought it my duty to extend my inquiries to all the states which could be designated under the description of Southern, to wit, Maryland, & those to the South of that.

As to Maryland, the joint certificate of the Senators & delegates of the state in Congress, the letter of Mr. Tilghman a gentleman of the law in the same state, & that of Mr. Gwinn, clerk of their General court, prove that British suits have been maintained in the superior & inferior courts throughout the state without any obstruction, that British claimants have, in every instance, enjoyed every facility in the tribunals of justice, equally with their own citizens, & have recovered in due course of law & remitted large debts, as well under contracts previous, as subsequent, to the war. [No. 49. 50. 51.]

In Virginia, the letters of Mr. Monroe & Mr. Giles, members of Congress from that state, & lawyers of eminence in it, prove that the courts of law in that state have been open and freely resorted to by the British creditors, who have recovered & levied their monies without obstruction: for we have no right to consider as obstructions the dilatory pleas of here & there a debtor distressed perhaps for time, or even

an accidental error of opinion in a subordinate court, when such pleas have been overruled, & such errors corrected in a due course of proceeding marked out by the laws in such cases. The general fact suffices to shew that the assertion under examination cannot be applied to this state. [No. 52, 53.]

In North Carolina, Mr. Johnston, one of the Senators for that state, tells us he has heard indeed but of few suits brought by British creditors in that state; but that he never heard that any one had failed of a recovery, because he was a British subject; & he names a particular case of Elmesley *v.* Lee's executors "of the recovery of a British debt in the Superior court at Edenton." See Mr. Johnston's letter, [No. 54.]

In South Carolina, we learn [from No. 55,] of particular judgments rendered, & prosecutions carried on, without obstacle, by British creditors, & that the courts are open to them there as elsewhere. As to the modifications of the execution heretofore made by the state law, having been the same for foreigner & citizen, a court would decide whether the treaty is satisfied by this equal measure; and if the British creditor is privileged by that against even the same modifications to which citizens & foreigners of all other nations were equally subjected, then the law imposing them was a mere nullity.

In Georgia, the letter of the Senators & representatives in Congress [No. 56] assures us that tho' they do not know of any recovery of a British debt in their state, neither do they know of a denial to recover since the ratification of the treaty; the

creditors having mostly preferred amicable settlement; & that the federal court is as open & unobstructed to British creditors there, as in any other of the U. S., and this is further proved by the late recovery of Brailsford & others before cited.

§ 48. You say more particularly of that state pa 25. "It is to be lamented, that in a more distant state (Georgia) it was a received principle, inculcated by an opinion of the highest judicial authority there, that as no legislative act of the state existed, confirming the treaty of peace with Gr. Britain, war still continued between the two countries; *a principle which may perhaps still continue in that state.*" No judge, no case, no time, is named. Imputations on the judiciary of a country are too serious to be neglected. I have thought it my duty therefore to spare no endeavors to find on what fact this censure was meant to be affixed. I have found that Judge Walton of Georgia, in the summer of 1783. the Definitive treaty not yet signed in Europe, much less known & ratified here, set aside a writ in the case of Thompson a British subject *v.* Thompson assigning for reasons 1. that there was no law authorizing a subject of England to sue a citizen of that state: 2. that the war had not been *definitively* concluded; or 3. if concluded, the treaty not *known to, or ratified by*, the legislature; nor 4, was it in any manner ascertained how those debts were to be liquidated." With respect to the last reason, it was generally expected that some more specific arrangements, as to the manner of liquidating & times of paying British debts would have been settled in the

Definitive treaty. [That the treaty should be *made known* to the legislature of the state, or in other words to the state, was certainly material. Tho' it's *ratification* of them was not, but that it should have been definitively formed, signed & ratified by the proper organs of the two governments, was so necessary to make it a law of the land, that it would have been wonderful had a judge declared it so, before he knew what the treaty was, and even before it existed. The executive and legislative branches indeed are free, & even bound, to respect preliminary articles, in expectation that they will be definitively confirmed, but judges are allowed no such latitude. They are to decide on the single question Is this law? or is it not law? and it is impossible to say that a treaty is become a law of the land as soon as it is provisionally signed only, & consequently to say that at the time Judge Walton gave this opinion, the law of the land was repealed which denied to Alien enemies the right of maintaining suits. 'Le traité devient, *par la publication*, un loi pour les sujets: et ils sont obligés de se conformer desormais aux disposition dont ou y est convenu?' Vattel. l. 4. §. 25. 'Pactio paci *paciscentis* statim obligat quamprimum *perfectum* cum ex pacto veniat obligatio subditos vero et milites, quamprimum iisdem fuerit publicata; cum de eâ ante publicationem ipsiis certo constare non possit.' Wolf. 1229. These authorities which establish the judge's opinion at the time he gave it, will remove your doubts whether the principle still continues in that state of *the continuance of war between the two countries*.' To which

is added the subsequent doctrine of the same Judge Walton, with respect to treaties, *when duly compleated*, that they are paramount the laws of the several states: has been seen in his charge to a grand jury before spoken of.][1] No. 58. shews that such arrangements were under contemplation. And the Judge seems to have been of opinion that it was necessary the treaty should be *definitively* concluded, before it could become a law of the land, so as to change the legal character of an *alien enemy*, who cannot maintain an action, into that of an *alien friend* who may. Without entering into the question Whether, between the Provisional & Definitive treaties, a subject of either party could maintain an action in the courts of the other (a question of no consequence, considering how short the interval was, & this probably the only action essayed) we must admit that if the judge was right in his opinion that a *definitive* conclusion was necessary, he was right in his consequence that it should be *made known* to the legislature of the state, or in other words to the state, & that, till that *notification*, it was not a law authorizing a subject of England to sue a citizen of that state. The subsequent doctrine of the same Judge Walton, with respect to the treaties, *when duly compleated*, that they are paramount to the laws of the several states, as has been seen in his charge to a grand jury before spoken of (§. 43.) will relieve your doubts whether the "principle still continues in that state of the *continuance of war between the two countries*."

[1] Portion in [ ] struck out in original.

§ 49. The latter part of the quotation before made merits notice also, to wit, where after saying not a single instance exists of the recovery of a British debt, it is added, "though many years have expired since the establishment of peace between the two countries." It is evident from the preceding testimony that many suits have been brought, & with effect: yet it has often been matter of surprise that more were not brought, & earlier, since it is most certain that the courts would have sustained their actions, & given them judgments. This abstinence on the part of the creditors has excited a suspicion that they wished rather to recur to the treasury of their own country, and, to have colour for this, they would have it believed that there were obstructions here to bringing their suits. Their testimony is in fact the sole to which your court, till now, has given access. Had the opportunity now presented been given us sooner, they should sooner have known that the courts of the U. S., whenever the creditors would chuse that recourse, and would press, if necessary, to the highest tribunals, would be found as open to their suits, & as impartial to their subjects, as theirs to ours.

§ 50. There is an expression in your letter, pa. 7, that "British creditors have not been countenanced or supported either by the respective legislatures, or by the state courts, in their endeavors to recover the full value of debts contracted antecedently to the treaty of peace." And again in pa. 8, " in many of the states, the subjects of the crown, in endeavoring to obtain the restitution of their

forfeited estates & property, have been treated with indignity." From which an inference might be drawn which I am sure you did not intend, to wit, that the creditors have been deterred from resorting to the courts by popular tumults, & not protected by the laws of the country. I recollect to have heard of one or two attempts by popular collections to deter the prosecution of British claims. One of these is mentioned in No. 49. But these were immediately on the close of the war, while it's passions had not yet had time to subside, and while the ashes of our houses were still smoking. Since that, say for many years past, nothing like popular interposition on this subject has been heard of in any part of our land. There is no country which is not sometimes subject to irregular interpositions of the people. There is no country able at all times to punish them. There is no country which has less of this to reproach itself with, than the U. S. nor any where the laws have a more regular course, or are more habitually and chearfully acquiesced in. Confident that your own observation and information will have satisfied you of this truth, I rely that the inference was not intended, which seems to result from these expressions.

§ 51. Some notice is to be taken as to the great deficiencies in collection urged on behalf of the British merchants. The course of our commerce with Gr Britain was ever for the merchant there to give his correspondent here a year's credit; so that we were regularly indebted from a year, to a year & a half's amount of our exports. It is the opinion of

judicious merchants that it never exceeded the latter term, and that it did not exceed the former at the commencement of the war. Let the holders then of this debt be classed into 1. Those who were insolvent at that time. 2. Those solvent then who became insolvent during the operations of the war, a numerous class. 3. Those solvent at the close of the war, but insolvent now. 4. Those solvent at the close of the war, who have since paid or settled satisfactorily with their creditors, a numerous class also. 5. Those solvent then & now, who have neither paid, nor made satisfactory arrangements with their creditors. This last class, the only one now in question, is little numerous, & the amount of their debts but a moderate proportion of the aggregate which was due at the commencement of the war; insomuch that it is the opinion that we do not owe to Gr. Britain, at this moment, of separate debts old and new, more than a year or a year and a quarter's exports, the ordinary amount of the debt resulting from the common course of dealings.

§ 52. In drawing a comparison between the proceedings of Gr Britain & the U. S. you say pa 35. "The conduct of Gr Britain, in all these respects, has been widely different from that which has been observed by the U. S. In the courts of law of the former country, the citizens of the U. S. have experienced *without exception* the same protection & *impartial* distribution of justice as the subjects of the crown." No nation can answer for perfect exactitude of proceedings in all their inferior courts.

It suffices to provide a supreme judicature where all error & partiality will be ultimately corrected. With this qualification we have heretofore been in the habit of considering the administration of justice in Gr Britain as extremely pure. With the same qualification we have no fear to risk everything which a nation holds dear on the assertion that the administration of justice here will be found equally pure. When the citizens of either party complain of the judiciary proceedings of the other, they naturally present but one side of the case to view and are therefore to be listened to with caution. Numerous condemnations have taken place in your courts, of vessels taken from us after the expirations of the terms of one & two months stipulated in the armistice. The state of Maryland has been making ineffectual efforts for nine years, to recover a sum of £55,000 sterl lodged in the bank of England previous to the war. A judge of the King's bench lately declared in the case of Greene an American citizen *v.* Buchanan & Charnock, British subjects, that a citizen of the U. S. who has delivered £43,000 sterl. worth of East India goods to a British subject at Ostend, receiving only £18,000 in part payment, is not entitled to maintain an action for the balance in a court of Gr Britain though his debtor is found there, is in custody of the court, and acknoleges the facts. These cases appear strong to us. If your judges have done wrong in them, we expect redress. If right we expect explanations. Some of them have already been laid before your court. The others will be so in due time. These, & such as

these, are the smaller matters between the two nations, which in my letter of Dec 15. I had the honor to intimate that it would be better to refer for settlement through the ordinary channel of our ministers, than embarrass the present important discussions with them. Such cases will be constantly produced by a collision of interests in the dealings of individuals, and will be easily adjusted by a readiness to do right on both sides, regardless of party.

§ 53. III. Interest. It is made an objection to the proceedings of our legislative & judiciary bodies that they have refused to allow Interest to run on debts during the course of the war. The decision of the right to this rests with the Judiciary alone; neither the legislative nor the executive having any authority to intermeddle.

The administration of justice is a branch of the sovereignty over a country, and belongs exclusively to the nation inhabiting it. No foreign power can pretend to participate in their jurisdiction, or that their citizens received there are not subject to it. When a cause has been adjudged according to the rules & forms of the country, it's justice ought to be presumed. Even error in the highest court, which has been provided as the last means of correcting the errors of others, and whose decrees are therefore subject to no further revisal, is one of those inconveniences flowing from the imperfection of our faculties, to which every society must submit: because there must be somewhere a last resort, wherein contestations may end. Multiply bodies of

revisal as you please, their number must still be finite, & they must finish in the hands of fallible men as judges. If the error be evident, palpable, et in re minime dubiâ, it then indeed assumes another form, it excites presumption that it was not mere error, but premeditated wrong, and the foreigner as well as native, suffering by the wrong, may reasonably complain, as for a wrong committed in any other way. In such case, there being no redress in the ordinary forms of the country, a foreign prince may listen to complaint from his subjects injured by the adjudication, may enquire into it's principles to prove their criminality, and according to the magnitude of the wrong, take his measures of redress by reprisal, or by a refusal of right on his part. If the denial of Interest in our case be justified by law, or even if it be against law, but not in that gross, evident, & palpable degree, which proves it to flow from the wickedness of the heart, & not error of the head in the judges, then it is no cause for just complaint, much less for a refusal of right, or self-redress in any other way. The reasons on which the denial of interest is grounded shall be stated summarily, yet sufficiently to justify the integrity of the judge, and even to produce a presumption that they might be extended to that of his science also, were that material to the present object.

§ 54. The treaty is the text of the law in the present case, and it's words are that there shall be no lawful impediment to the recovery of bonâ fide *debts*. Nothing is said of *Interest* on these debts: and the sole question is Whether where a *debt* is given, *interest*

thereon flows from the general principles of the law? Interest is not a part of the debt, but something added to the debt by way of damage for the detention of it. This is the definition of the English lawyers themselves who say "interest is recovered by way of *damages*, ratione detentionis debiti." 2. Salk. 622, 623. Formerly all interest was considered as unlawful, in every country of Europe: it is still so in Roman catholic countries, & countries little commercial. From this, as is a general rule, a few special cases are excepted. In France particularly the exceptions are those of Minors, Marriage portions, & Money the price of lands. So thoroughly do their laws condemn the allowance of interest, that a party who has paid it voluntarily, may recover it back again whenever he pleases. Yet this has never been taken up as a gross & flagrant denial of justice, authorizing national complaint against those governments. In England also, all interest was against law, till the stat. 37. H. 8. c. 9. The growing spirit of commerce, no longer restrained by the principles of the Roman church, then first began to tolerate it. The same causes produced the same effect in Holland, & perhaps in some other Commercial and catholic countries. But even in England, the allowance of interest is not given *by express law*, but rests on *the discretion of judges & juries*, as the arbiters of damages. Sometimes the judge has enlarged the interest to 20. per cent per annum. [1 Chanc. Rep. 57.] In other cases he fixes it, habitually, one per cent lower than the legal rate [2 Tr. Atk. 343.] and in a multitude of cases he re-

fuses it altogether. As, for instance, no Interest is allowed

1. On arrears of rents, profits, or annuities. (1. Chanc. Rep. 184, 2. P. W. 163. la temp-Talbot. 2.)

2. For maintenance. Vin. Abr. Interest. c. 10.

3. For monies advanced by exrs. 2 Abr. eq. 531, 15.

4. For goods sold & delivered. 3. Wilson. 206.

5. On book debts, open accounts, or simple accounts. 3 Chan. rep. 64. Freem. Ch. rep. 133. Dougl. 376.

6. For money lent without a note. 2. Stra. 910.

7. On an inland bill of exchange, if no protest is taken. 2 Stra. 910.

8. On a bond after 20. years. 2. Vern. 458. or after a tender.

9. On decrees, in certain cases. Freem. Ch. rep. 181.

10. On judgments in certain cases, as battery & slander. Freem. Ch. rep. 37.

11. On any decrees or judgments in certain courts, as the Exchequer chamber. Douglass. 752.

12. On costs. 2. Abr. eq. 530. 7.

And we may add, once for all, that there is no instrument or title to debt so formal & sacred, as to give a right to interest on it under all possible circumstances. The words of Lord Mansfield, Dougl. 753. where he says "that the question was what was to be the rule for assessing the *damage*, & that, in this case, the *interest* ought to be the *measure of the damage*, the action being for *debt*, but that in a case of another sort, *the rule might be different:*" his words Dougl. 376. "that interest might be payable in cases of delay if a jury *in their discretion* shall think fit to

allow it" and the doctrine in Giles v. Hart 2 Salk. 622. that damages, or interest, are but an accessary to the debt, which may be barred by circumstances which do not touch the debt itself, suffice to prove that interest is not a part of the debt, neither comprehended in the thing, nor in the term, that words which pass the debt, do not give interest necessarily, that the interest *depends altogether on the discretion of the judges & jurors*, who will govern themselves by all existing circumstances, will take the legal interest for the measure of their damages, or more, or less, as they think right, will give it from the date of the contract, or from a year after, or deny it altogether, according as the fault or the sufferings of the one or the other party shall dictate. Our laws are generally an adoption of yours; & I do not know that any of the states have changed them in this particular. But there is one rule of your & our law, which, while it proves that every title of debt is liable to a disallowance of interest under special circumstances, is so applicable to our case, that I shall cite it as a text, & apply to it the circumstances of our case. It is laid down in Vin. abr. Interest. c. 7, & 2. Abr. eq. 5293. and elsewhere in these words. "Where, by a *general & national calamity*, nothing is made out of lands which are assigned for payment of interest, it ought not to run on *during the time of such calamity*." This is exactly the case in question. Can a more *general national calamity* be conceived than that universal devastation which took place in many of these states during the war? Was it ever more exactly the case anywhere *that nothing was*

made out of the lands which were to pay the interest? The produce of those lands, for want of the opportunity of exporting it safely, was down to almost nothing in real money, e. g. tobacco was less than a dollar the hundred weight. Imported articles of cloathing or consumption were from 4. to 8. times their usual price. A bushel of salt was usually sold for 100 lb. of tobacco. At the same time these lands and other property, in which the money of the British creditor was vested, were paying high taxes for their own protection, & the debtor, as nominal holder, stood ultimate ensurer of their value to the creditor who was the real proprietor, because they were bought with his money. And who will estimate the value of this insurance, or say what would have been the forfeit, in a contrary event of the war? Who will say that the risque of the property was not worth the interest of it's price?—*General calamity* then prevented profit, & consequently stopped interest, which is in lieu of profit. The creditor says indeed he has laid out his money, he has therefore lost the use of it. The debtor replies that if the creditor has lost, he has not gained it: that this may be a question between two parties both of whom have lost. In that case the courts will not double the loss of the one, to save all loss from the other. That is a rule of natural, as well as municipal law, that in questions de damno evitando, melior est conditio possidentis.—If this maxim be just where each party is equally innocent, how much more so, where the loss has been produced by the act of the creditor? For a nation as a society forms a moral person, and

every member of it is personally responsible for his society. It was the act of the lender, or of his nation which annihilated the profits of the money lent; he cannot then demand profits which he either prevented from coming into existence, or burnt or otherwise destroyed after they were produced. If then there be no instrument or title of debt so formal and sacred as to give right to interest under all possible circumstances, and if circumstances of exemption, stronger than in the present case, cannot possibly be found, then no instrument or title of debt, however formal or sacred, can give right to interest under the circumstances of our case.—Let us present the question in another point of view. Your own law forbade the payment of interest when it forbade the receipt of American produce into Gr Britain, and made that produce fair prize on it's way from the debtor to the creditor, or to any other for his use or reimbursement. All personal access between creditor & debtor was made illegal: and the debtor who endeavored to make a remitment of his debt or interest, must have done it three times, to ensure it's getting once to hand: for two out of three vessels were generally taken by the creditor nation, & sometimes by the creditor himself, as many of them turned their trading vessels into privateers—Where no place has been agreed on for the payment of a debt the laws of England oblige the debtor to seek his creditor wheresoever he is to be found *within the realm.* Coke Lit. 210. b. but do not bind him to go out of the realm in search of him. This is our law too. The first act generally of the creditors & their

agents here was to withdraw from the U. S. with their books & papers. The creditor thus withdrawing from his debtor, so as to render payment impossible, either of the principal or interest, makes it like the common case of a tender & refusal of money, after which interest stops both by your laws & ours. —We see too from the letter of Mr. Adams, June 16, 1786. [No. 57.] that the British Secretary for foreign affairs was sensible that, a British statute having rendered criminal all intercourse between the Debtor and Creditor, had placed the article of interest on a different footing from the Principal. And the letter of our Plenipotentiaries to Mr. Hartley the British Plenipotentiary for forming the definitive treaty [No. 58] shews that the omission to express *interest* in the treaty was not merely an oversight of the parties, that it's allowance was considered by our Plenipotentiaries as a thing not to be intended in the treaty, was declared against by Congress, & that declaration communicated to Mr. Hartley. After such an explanation, the omission is a proof of acquiescence & an intention not to claim it.—It appears then that the *Debt* and *interest* on that Debt are separate things in every country, & under separate rules. That in every country, a *debt* is recoverable, while, in most countries, interest is refused in all cases; in others given or refused, diminished or augmented at the discretion of the judge; no where given in all cases indiscriminately, and consequently no where so incorporated with the *debt*, as to pass with that *ex vi termini*, or otherwise to be considered as a determinate & vested thing.

While the taking *interest on money* has thus been considered in some countries as morally wrong in all cases, in others made legally right but in particular cases, the taking *profits from lands*, or rents in lieu of profits, has been allowed everywhere, & at all times, both in morality and law. Hence it is laid down as a general rule, Wolf. §. 229. "Si quis fundum alienum possidet, domini est quantum valet usus fundi, et possessoris quantum valet ejus cultura et cura." But even in the case of lands restored by a treaty, the *arrears* of profits or rents are never restored, unless they be particularly stipulated. "Si res vi pacis restituendæ, restituendi quoque sunt fructus *a die concessionis*" says Wolf. § 1224. and Grotius "cui pace res conceditur, ei et fructus conceduntur *a tempore concessionis*. NON RETRO." l. 3. c. 20. § 22. To place the right to interest on money on a level with the right to profits on land, is placing it more advantageously than has been hitherto authorized: and if, as we have seen, a stipulation to restore *lands* does not include a stipulation to restore the *back profits*, we may certainly conclude *a fortiori* that the restitution of debts does not include an allowance of *back interest* on them.

These reasons, & others like these, have probably operated on the different courts to produce decisions that "no interest should run during the time this general & national calamity lasted," and they seem sufficient, at least, to rescue their decision from that flagrant denial of right, which can alone authorize one nation to come forward with complaints against the judiciary proceedings of another.

§ 55. The states have been uniform in the allowance of interest before, & since the war, but not of that claimed during the war. Thus we know by [E. 1.] the case of Neate's exrs *v.* Sands in New York, & Mildred *v.* Dorsey in Maryland, that in those states, interest during the war is disallowed by the courts. By [D. 8.] 1784. May. the act relating to debts due to persons who have been & remained within the enemy's power or lines during the late war. That Connecticut left it to their Court of chancery to determine the matter according to the rules of Equity, or to leave it to referees: by [E. 2.] the case of Osborne *v.* Mifflin's exrs, and [E. 3.] Hare *v.* Allen explained in the letter of Mr. Rawle Attorney of the U. S. [No. 59.] And by the letter of Mr. Lewis, judge of the District court of the U. S. [No. 60.] that in Pennsylvania the rule is that where neither the Creditor nor any agent, was within the state, no interest was allowed: where either remained they gave interest. In all the other states I believe, it is left discretionary in the courts and juries. In Massachusets the practice has varied. In Nov. 1784. they instruct their delegates in Congress to ask the determination of Congress, whether they understood the word "debts" in the treaty as including interest? and whether it is their opinion that interest during the war should be paid? and at the same time they pass [D. 9.] the act directing the courts to suspend rendering judgment for any interest that might have accrued between Apr. 19. 1775. & Jan. 20. 1783. But in 1787, when there was a general compliance enacted thro' all the U. S. in order to see if that

would produce a counter-compliance, their legislature passed the act repealing all laws repugnant to the treaty [No. 33.] and their courts, on their part changed their rule relative to interest during the war which they have uniformly allowed since that time. The circuit court of the U. S. at their session at —— in —— 1790, determined in like manner that interest should be allowed during the war. So that on the whole we see that, in one state interest during the war is given in every case; in another it is given wherever the creditor, or any agent for him, remained in the country, so as to be accessible; in the others it is left to the courts & juries to decide according to their discretion and the circumstances of the case.

TO RECAPITULATE

§ 56. I have, by way of Preliminary, placed out of the present discussion, all acts & proceedings prior to the Treaty of Peace, considering them as settled by that instrument, & that the then state of things was adopted by the parties, with such alterations only as that instrument provided.

I have then taken up the subsequent acts and proceedings, of which you complain, as infractions, distributing them according to their subjects: to wit,

I. Exile and Confiscations.
II. Debts.
III. Interest.

I. Exile and Confiscations. After premising that these are lawful acts of war; I have shewn that the Vth. article was *recommendatory* only,

It's stipulations being, not to *restore* the confiscations and exiles, but to *recommend* to the state legislatures to restore them.

That this word, having but one meaning, establishes the intent of the parties: & moreover that it was particularly explained by the American negotiators that the legislatures would be free to comply with the recommendation or not, & probably would not comply:

That the British *negotiators* so understood it:

That the British *ministry* so understood it:

And the members of both houses of *parliament*, as well those who approved as who disapproved the article.

I have shewn that Congress did recommend earnestly & *bonâ fide:*

That these states refused or complied, in a greater or less degree, according to circumstances, but more of them & in a greater degree than was expected:

And that Compensation by the British treasury, to British sufferers, was the alternative of her own choice, our negotiators having offered to do that if she would compensate such losses as we had sustained by acts authorized by the modern & moderate principles of war.

II. Before entering on the subject of Debts, it was necessary

1. To review the British infractions, and refer them to their exact dates.

To shew that the carrying away of the *negroes* preceded the 6th of May, 1783.

That instead of evacuating the *Upper posts with all convenient speed,*

No order had been received for the evacuation Aug 13. 1783.

None had been received May 10. 1784.

None had been received July 13. 1784.

From whence I conclude none had ever been *given:*

And thence that none had ever been *intended.*

In the latter case, this infraction would date from the signature of the treaty, but founding it on the *not giving the order with convenient speed,*

It dates from April 1783. when the order for evacuating New York was given:

And there can be no reason why it should have been inconvenient to give this order as early.

The Infraction then respecting the Upper Posts, was before the treaty was known in America:

That respecting the Negroes, was as soon as it was known.

I have observed that these infractions were highly injurious.

The first, by depriving us of our fur-trade, profitable in itself,

And valuable as a means of remittance for paying the Debts:

By intercepting our friendly & neighborly intercourse with the Indian nations, & consequently keeping us in constant, expensive & barbarous war with them.

The second, by withdrawing the cultivators of the soil, the produce of which was to pay the debts.

2. After fixing the date of the British infractions, I have shewn

That as they *preceded*, so they *produced*, the acts on our part complained of as obstacles to the recovery of the Debts:

That when one party breaks any stipulation of a treaty, the other is free to break it also, either in the whole, or in equivalent parts, at it's pleasure.

That Congress having made no election,

Four of the states assumed separately to modify the recovery of debts

1. By indulging their citizens with longer & more practicable times of payment:

2. By liberating their bodies from execution, on their delivering property to the creditor, to the full amount of his demand, on a fair appraisement, as practised always under the Elegit.

3. By admitting, during the first moments of the non-existence of coin among us,

A discharge of executions, by payment in paper money.

That the first of these acts of retaliation was in Dec. 1783. nine months after the infractions committed by the other party:

And all of them were so moderate, of so short duration, the result of such necessities, and so produced, that we might with confidence have referred them, *alterius principis, quâ boni viri, arbitrio.*

[3. That Congress had so far thought it best neither to declare, nor relinquish, the infractions of the other party, neither to give, nor refuse, their sanction to the retaliations by the four states.] [1]

3. That, induced at length by assurances from the

[1] Portion in [ ] struck out in original.

British court, that they would concur in a fulfilment of the treaty,

Congress, in 1787, declared to the states it's will that even the appearance of obstacles raised by their acts should no longer continue,

And required a formal repeal of every act of that nature; & to avoid question required it as well from those who had not, as from those who had passed such acts: which was complied with so fully that no such laws remained in any state of the Union, except one:

And even that one could not have forborne, if any symptoms of compliance from the opposite party had rendered a reiterated requisition from Congress, important.

4. That indeed the requiring such a repeal, was only to take away pretext: for

That it was at all times perfectly understood that Treaties controuled the laws of the states:

The Confederation having made them obligatory on the whole:

Congress having so declared and demonstrated them:

The legislatures & executives of most of the states having admitted it:

& the Judiciaries, both of the separate & general governments, so deciding.

That the courts are open every where upon this principle:

That the British creditors have, for some time, been in the habit & course of recovering their debts at law

That the class of separate & unsettled debts, contracted before the war, forms now but a small proportion of the original amount:

That the integrity and independance of the courts of justice in the U S. are liable to no reproach

Nor have popular tumults furnished any ground for suggesting that either courts or creditors are overawed by them in their proceedings.

III. Proceeding to the article of Interest, I have observed

That the decision Whether it shall, or shall not be allowed *dur^e^ the war*, rests, by our constitution, with the Courts altogether.

That, if these have generally decided against the allowance, the reasons of their decisions appear so weighty, as to clear them from the charge of that palpable degree of wrong which may authorize National complaint, or give a right of refusing execution of the treaty, by way of reprisal.

To vindicate them, I have stated shortly, some of the reasons which support their opinion:

That Interest during the war, was not *expressly* given by the treaty:

That the revival of Debts did not, *ex vi termini*, give interest on them.

That interest is not a part of the debt, but damages for the detention of the debt:

That it is disallowed habitually in most countries,

Yet has never been deemed a ground of national complaint against them:

That in England also, it was formerly unlawful in all cases:

That at this day it is denied there in such a variety of instances, as to protect from it a great part of the transactions of life:

That in fact there is not a single *title* to debt, so formal & sacred,

As to give a right to *Interest*, under all possible circumstances, either there or here:

That, of these circumstances, Judges & Jurors, are to decide *in their discretion*, & are accordingly in the habit of augmenting, diminishing or refusing interest in every case, accordg to their discretion:

That the circumstances against the allowance are unquestionably of the strongest in our case:

That a *great national calamity*, rendering the lands unproductive, which were to pay the interest, has been adjudged a sufficient cause of itself to suspend interest:

That were both pl. & def. equally innocent of that cause,

The question, who should avoid loss? would be in favor of the party in possession:

And, *à fortiori*, in his favor, where the calamity was produced by the act of the demandant.

That moreover, the laws of the party creditor, had cut off the *personal* access of his debtor;

And the transportation of his *produce or money* to the country of the creditor, or to any other for him:

And where the Creditor prevents paiment, both of Principal & interest, y^{e} latter, at least, is justly extinguished:

That the *departure* of the Creditor, leaving no

Agent in the country of the Debtor, would have stopped Interest of itself:

The Debtor not being obliged to go out of the country to seek him:

That the British minister was heretofore sensible of the weight of the objections to the claim of Interest:

That the Declarations of Congress, & our Plenipotentiaries, *previous to the Definitive treaty*, & the silence of that instrument

Afford proof that Interest was not intended on our part, nor insisted on on the other:

That were we to admit interest on money to equal favor with profits on land, arrears of profits would not be demandable in the present case, nor consequently arrears of interest:

And, on the whole, without undertaking to say what the law is, which is not the province of the Executive,

We say that the reasons of those judges who deny interest during the war *appear sufficiently cogent*

To account for their opinion on honest principles:

To exempt it from the charge of palpable & flagrant wrong, *in re minimé dubiâ:*

And to take away all pretence of withholding execution of the treaty, by way of reprisal for that cause.

§ 57. I have now, sir, gone through the several acts & proceedings enumerated in your Appendix, as infractions of the treaty, omitting, I believe, not a single one, as may be seen by a Table hereto subjoined, wherein every one of them, as marked and

numbered in your Appendix, is referred to the section of this letter in which it is brought to view, and the result has been, as you have seen

1. That there was no absolute stipulation to restore *antecedent* confiscations, & that none *subsequent* took place:

2. That the recovery of the debts was obstructed *validly* in none of our states, *invalidly* only in a few, & that not till long after the infractions committed on the other side: and

3. That the decisions of courts & juries against the claims of interest, are too probably founded, to give cause for questioning their integrity. These things being evident, I cannot but flatter myself, after the assurances received from you of his Britannic majesty's desire to remove every occasion of misunderstanding from between us, that an end will now be put to the disquieting situation of the two countries, by as complete execution of the treaty as circumstances render practicable at this late day. That it is to be done so late, has been the source of heavy losses of blood & treasure to the U. S. Still our desire of friendly accommodation is, & has been, constant. No "*lawful impediment* has been opposed to the prosecution of the just rights of your citizens." And if any instances of *unlawful* impediment have existed, in any of the inferior tribunals, they would, like other unlawful proceedings, have been overruled on appeal to the higher courts. If not overruled there, a complaint to the government, would have been regular, & their interference probably effectual. If your citizens would not prosecute their

rights, it was impossible they should recover them, or be denied recovery: and till a denial of right through all the tribunals, there is no ground for complaint, much less for a refusal to comply with solemn stipulations the execution of which is too important to us ever to be dispensed with. These difficulties being removed from between the two nations, I am persuaded the interests of both will be found in the strictest friendship. The considerations which lead to it are too numerous and forcible to fail of their effect: & that they may be permitted to have their full effect, no one wishes more sincerely than he who has the honor to be, with sentiments of the most perfect esteem & respect Sir your most obed^{t} & most humble serv^{t}

TO JAMES MADISON J. MSS.

PHILADELPHIA, June 1. 1792.

MY DEAR SIR,—I sent you last week some of Fenno's papers in which you will have seen it asserted impudently & boldly that the suggestions against Members of Congress were mere falsehoods. I now inclose his Wednesdays paper. I send you also a copy of Hamilton's notes. Finding that the letter would not be ready to be delivered before the Pr's return, I make notes corresponding with his, shewing where I agreed, where I did not, & I put his & mine into the Pr's hand's to be perused a this leisure. The result was that he approved of the letter remaining as it was particularly on the article

of Debts, which he thought a subject of justification & not merely of extenuation.—He never received my letter of the 23d till yesterday. He mentioned it to me in a moment when nothing more could be said than that he would take an occasion of conversing with me on the subject.

I have letters from France concerning the appointment there in the severest terms.

TO C. W. F. DUMAS J. MSS.

PHILADELPHIA, June 3, 1792.

DEAR SIR,—* * * The prices of our funds have undergone some variations within the last three months. The six percents were pushed by gambling adventurers up to 26/ or 27/ the pound. A bankruptcy having taken place among them, & considerably affected the more respectable part of the paper holders, a greater quantity of paper was thrown suddenly on the market than there was demand or money to take up. The prices fell to 19/. This crisis is past & they are getting up towards their true value, being at 23/. Tho' the price of public paper is considered as the barometer of the public credit, it is truly so only as to the general average of prices. The real credit of the U.S depends on the ability, & the immutability of their will, to pay their debts. These were as evident when their paper fell to 19/. as when it was at 23/. The momentary variation was, like that in the price of corn, or any other commodity, the result of a momentary disproportion between the demand & supply.

The unsuccessful issue of our expeditions against the Indians the last year, are not unknown to you. More adequate preparations are making for the present year, in the mean time, some of the hostile tribes have accepted peace & others have expressed a readiness to do the same.

Another plentiful year has been added to those which had preceeded it; & the present bids fair to be equally so, a prosperity built on the basis of Agriculture is that which is the most desirable to us, because to the effects of labour, it adds the effects of a greater proportion of soil. The checks however which the commercial regulations of Europe have given to the sale of our produce, has produced a very considerable degree of domestic manufacture, which so far as it is in the household way, will doubtless continue: and so far as it is more public, will depend on the continuance or discontinuance of this policy of Europe.

TO JAMES MADISON J. MSS.

PHILADELPHIA June 4. 1792.

DEAR SIR,—I wrote you on the 1st inst. which I will call No. 1. and number my letters in future that you may know when any are missing. Mr. Hammond has given me an answer in writing, saying he must send my letter to his court & wait their instructions. On this I desired a personal interview that we might consider the matter together in a familiar way. He came accordingly yesterday and took a solo dinner with me, during which our con-

versation was full, unreserved & of a nature to inspire mutual confidence. The result was that he acknoleged explicitly that his court had hitherto heard one side of the question only, & that from prejudiced persons, that it was now for the first time discussed, that it was placed on entirely new ground, his court having no idea of a charge of first infraction on them, and a justification on that ground of what had been done by our states, that this made it quite a new case to which no instructions he had could apply. He found from my expressions that I had entertained an idea of his being able to give an order to the governor of Canada to deliver up the posts, and smiled at the idea; & it was evident from his conversation that it had not at all entered into the expectations of his court that they were to deliver us the posts. He did not say so expressly, but he said that they considered the retaining of the posts as a very imperfect compensation for the losses their subjects had sustained; under the cover of the clause of the treaty which admits them to the navigation of the Missisipi and the evident mistake of the negotiators in supposing that a line due West from the lake of the Woods would strike the Missisipi, he supposed an explanatory convention necessary, & shewed a desire that such a slice of our Northwestern territory might be cut off for them as would admit them to the navigation profit of the Missisipi; &c. &c. He expects he can have his final instructions by the meeting of Congress.—I have not yet had the conversation mentioned in my last. Do you remember that you were to leave me a list of names? Pray

send them to me. My only view is that, if the P. asks me for a list of particulars, I may enumerate names to him, without naming my authority, and shew him that I had not been speaking merely at random. If we do not have our conversation before I can make a comparative table of the debts and numbers of all modern nations, I will shew him how high we stand indebted by the poll in that table.—I omitted Hammond's admission that the debt from the Potowmac North might be considered as liquidated, that that of Virginia was now the only great object, & cause of anxiety, amounting to two millions sterling.—Adieu. Yours affectionately.

TO THE GOVERNOR OF NORTH CAROLINA J. MSS.

(WILLIAM BLOUNT.)

PHILADELPHIA, June 6. 1792.

SIR,—I have the honor to acknolege the receipt of Mr. Smith's letter of Dec. 9. written during your absence, as also yours of Dec. 26. & Apr. 23. With respect to the question on the dividing line between your government and the State of Kentucky, as that state is now coming into the Union as an independent member, we have delayed taking any measures for settling the boundary till they can be taken in concert with Kentucky.

With respect to the grants of land made by the state of N. Carolina since her deed of cession, south of the French Broad river, I have written to the Governor of that State to ask an explanation whether

it has been by error or under any claim of right on their part? As soon as I receive his answer, proper proceedings at law shall be directed against the individual grantees to confirm or vacate their grants according to law. In the mean time I am to desire you to prevent any *new settlements* being made on those lands in the mildest way which the law authorises and which may be effectual. By *new settlements* I mean all made since the day of the meeting of the last session of Congress; because the intrusion of those made before that day was stated to Congress, and may be considered as under their consideration. I should think however, even as to those previous settlers, it would be proper for you to require every man to give in his name and a description of the spot of his settlement to prevent new settlers from confounding themselves with them.

TO JAMES MADISON J. MSS.

PHILADELPHIA June 10. 1792.

DEAR SIR,—The poll of the N. Y. election stood the day before yesterday.

	Clinton	Jay		Clinton	Jay
Suffolk.....	481	228	Richmond....	106	4
Queen's cty...	532	288	Ulster.....	947	654
King's cty....	244	92	Columbia.....	1303	717
City & county of N. Y.....	603	739	Renslaer.....	404	717
Orange.....	551	80	Washington ..	758	471
Dutchess.....	751	945	Saratoga.....	405	461
Westchester...	347	824		7432	6220

General Schuyler says there will be about 16.000 voters and offers to bet 3. to 1. as far as 500. guineas that Jay will still be elected. However, he seems to be alone here in that expectation. We dined together at the P's on Thursday, and happening to set next one another we got towards the close of the afternoon, into a little contest whether hereditary descent or election was most likely to bring *wise* and *honest* men into public councils. He for the former, Pinckney & myself for the latter.

I was not displeased to find the P. attended to the conversation as it will be a coroboration of the design imputed to that party in my letter.—At a dinner of Jay-ites yesterday, R. M. mentioned to the company that Clinton was to be vice-president, that the Antis intended to set him up. Bingham joined in attesting the project, which appeared new to the rest of the company. I paid Genl. Irvine *50* D. for Mr. More, the receipt he had, vouching it. Adieu yours affectionately.

TO THE U. S. MINISTER TO GREAT BRITAIN

(THOMAS PINCKNEY.) J. MSS.

PHILADELPHIA, June 11. 1792.

DEAR SIR,—I have already had the honor of delivering to you your commission as Minister Plenipotentiary of the U. S. at the court of London, and have now that of enclosing your letter of credence to the king, sealed, and a copy of it open for your own information. Mr. Adams, your predecessor, seemed to understand, on his being presented to that

court, that a letter was expected for the queen also. You will be pleased to inform yourself whether the custom of that court requires this from us, and to enable you to comply with it, if it should, I enclose a letter sealed for the Queen, and a copy of it open for your own information. Should it's delivery not be requisite, you will be so good as to return it, as we do not wish to set a precedent which may bind us hereafter to a single unnecessary ceremony.

To you, Sir, it will be unnecessary to undertake a general delineation of the duties of the office to which you are appointed. I shall therefore only express a desire that they be constantly exercised in that spirit of sincere friendship which we bear to the English nation, and that in all transactions with the Minister, his good dispositions be conciliated by whatever in language or attentions may tend to that effect. With respect to their government, or policy, as concerning themselves or other nations, we wish not to intermeddle in word or deed, and that it be not understood that our government permits itself to entertain either a will or opinion on the subject.

I particularly recommend to you, as the most important of your charges, the patronage of our commerce, and it's liberation from embarrassments in all the British dominions; but most especially in the West Indies. Our Consuls in Great Britain & Ireland are under general instructions to correspond with you as you will perceive by a copy of a circular letter lately written to them, & now inclosed. From them you may often receive interesting information. Mr. Joshua Johnson is Consul for us at London,

James Maury at Liverpool, Elias Vanderhorst at Bristol, Thomas Auldjo Vice Consul at Pool (resident at Cowes) and William Knox consul at Dublin. The jurisdiction of each is exclusive & independant and extends to all places within the same allegiance nearer to him than to the residence of any other consul or vice-consul of the U. S. The settlement of their accounts from time to time, and the payment of them, are referred to you, & in this the act respecting Consuls & any other laws made or to be made are to be your guide. Charges which these do not authorize, you will be pleased not to allow. These accounts are to be settled up to the first day of July in every year, and to be transmitted to the Secretary of State. * * *

The peculiar custom in England of impressing seamen on every appearance of war, will occasionally expose our seamen to peculiar oppressions & vexations. These will require your most active exertions and protection, which we know cannot be effectual without incurring considerable expence: and as no law has yet provided for this, we think it fairer to take the risk of it on the Executive than to leave it on your shoulders. You will therefore with all due economy and on the best vouchers the nature of the case will admit, meet those expences, transmitting an account of them to the Secretary of state to be communicated to the legislature. It will be expedient that you take proper opportunities in the meantime of conferring with the minister on this subject in order to form some arrangement for the protection of our seamen on those occasions. We

entirely reject the mode which was the subject of a conversation between Mr. Morris & him, which was that our seamen should always carry about them certificates of their citizenship. This is a condition never yet submitted to by any nation, one with which seamen would never have the precaution to comply, the casualties of their calling would expose them to the constant destruction or loss of this paper evidence, and thus the British government would be armed with *legal authority* to impress the whole of our seamen. The simplest rule will be that the vessel being American, shall be evidence that the seamen on board her are such. If they apprehend that our vessels might thus become asylums for the fugitives of their own nation from impress-gangs, the number of men to be protected by a vessel may be limited by her tonnage, and one or two officers only be permitted to enter the vessel in order to examine the numbers on board; but no press-gang should be allowed ever to go on board an American vessel till after it shall be found that there are more than their stipulated number on board, nor till after the master shall have refused to deliver the supernumeraries (to be named by himself) to the press-officer who has come on board for that purpose, and even then the American consul should be called in. In order to urge a settlement of this point before a new occasion may arise, it may not be amiss to draw their attention to the peculiar irritation excited on the last occasion, and the difficulty of avoiding our making immediate reprisals on their seamen here. You will be so good as to communicate to me what shall pass

on this subject, and it may be made an article of convention to be entered into either there or here.

You will receive herewith a copy of the journals of the antient Congress, and of the laws and journals and reports of the present. Those for the future, with gazettes & other interesting papers, shall be sent you from time to time; and I shall leave you generally to the gazettes for whatever information is in possession of the public, and shall specially undertake to communicate by letter, such only relative to the business of your mission as the gazetteers cannot give. From you I ask once or twice a month a communication, of interesting occurrences in England, of the general affairs of Europe, the court gazette, the best paper in the interest of the ministry, & the best of the opposition party, most particularly that one of each which shall give the best account of the debates of parliament, the parliamentary register annually, and such other political publications as may be important enough to be read by one who can spare little time to read anything, or which may contain matter proper to be kept and turned to on interesting subjects and occasions. The English packet is the most certain channel for such epistolary communications as are not very secret, and intermediate occasions by private vessels may be resorted to for secret communications, and for such as would come too expensively burthened with postage by the packets. You are furnished with a cypher for greater secrecy of communication. To the papers before mentioned I must desire you to

add the Leyden gazette, paper by paper as it comes out, by the first vessel sailing after it's receipt.

I inclose you the papers in the case of a Mr. Wilson, ruined by the capture of his vessel after the term limited by the Armistice. They will inform you of the circumstances of his case, and where you may find him personally, and I recommend his case to your particular representations to the British court. It is possible that other similar cases may be transmitted to you. You have already received some letters of Mr. Adams's explanatory of the principles of the armistice and of what had passed between him & the British minister on the subject. * * *

TO LAFAYETTE [1] J. MSS.

PHILADELPHIA, June 16, 1792.

Behold you, then, my dear friend, at the head of a great army, establishing the liberties of your country against a foreign enemy. May heaven favor your cause, and make you the channel thro' which it may pour it's favors. While you are exterminating the monster aristocracy, & pulling out the teeth & fangs of it's associate monarchy, a contrary tendency is discovered in some here. A sect has shewn itself among us, who declare they espoused our new constitution, not as a good & sufficient thing itself, but only as a step to an English constitution, the only thing good & sufficient in itself, in their eye. It is happy for us

[1] This is the first letter written by Jefferson to Lafayette after the abolition of titles.

that these are preachers without followers, and that our people are firm & constant in their republican purity. You will wonder to be told that it is from the Eastward chiefly that these champions for a king, lords & commons come. They get some important associates from New York, and are puffed off by a tribe of Agioteurs which have been hatched in a bed of corruption made up after the model of their beloved England. Too many of these stock jobbers & king-jobbers have come into our legislature, or rather too many of our legislature have become stock jobbers & king-jobbers. However the voice of the people is beginning to make itself heard, and will probably cleanse their seats at the ensuing election.—The machinations of our old enemies are such as to keep us still at bay with our Indian neighbors.—What are you doing for your colonies? They will be lost if not more effectually succoured. Indeed no future efforts you can make will ever be able to reduce the blacks. All that can be done in my opinion will be to compound with them as has been done formerly in Jamaica. We have been less zealous in aiding them, lest your government should feel any jealousy on our account. But in truth we as sincerely wish their restoration, and their connection with you, as you do yourselves. We are satisfied that neither your justice nor their distresses will ever again permit their being forced to seek at dear & distant markets those first necessaries of life which they may have at cheaper markets placed by nature at their door, & formed by her for their support.—What is become of Mde de Tessy and Mde de

Tott? I have not heard of them since they went to Switzerland. I think they would have done better to have come & reposed under the Poplars of Virginia. Pour into their bosoms the warmest effusions of my friendship & tell them they will be warm and constant unto death. Accept of them also for Mde de la Fayette & your dear children—but I am forgetting that you are in the field of war, & they I hope in those of peace. Adieu my dear friend! God bless you all. Yours affectionately.

TO THE U. S. MINISTER TO FRANCE J. MSS.
(GOUVERNEUR MORRIS.)

PHILADELPHIA, June 16, 1792.

DEAR SIR,—My last to you was of Mar. 28. Yours of Apr 6. & 15. came to hand three days ago.

With respect to the particular objects of commerce susceptible of being placed on a better footing, on which you ask my ideas they will shew themselves by the inclosed table of the situation of our commerce with France and England. That with France is stated as it stood at the time I left that country, when the only objects whereon change was still desireable, were those of salted provisions, tobacco & tar, pitch & turpentine. The first was in negotiation when I came away, & was pursued by Mr. Short with prospects of success till their general tariff so unexpectedly deranged our commerce with them as to other articles. Our commerce with their West Indies had never admitted amelioration during

my stay in France. The temper of that period did not allow even the essay, and it was as much as we could do to hold the ground given us by the Marshal de Castries' *Arret* admitting us to their colonies with salted provisions &c. As to both these branches of commerce, to wit, with France & her colonies, we have hoped they would pursue their own proposition of arranging them by treaty, & that we could draw that treaty to this place. There is no other where the dependance of their colonies on our states for their prosperity is so obvious as here, nor where their negotiator would feel it so much. But it would be imprudent to leave to the uncertain issue of such a treaty, the reestablishment of our commerce with *France* on the footing on which it was in the beginning of their revolution. That treaty may be long on the anvil; in the meantime we cannot consent to the late innovations without taking measures to do justice to our own navigation. This object therefore is particularly recommended to you, while you will also be availing yourself of every opportunity which may arise of benefiting our commerce in any other part. I am in hopes you will have found the moment favorable on your arrival in France when M. Claviere was in the ministry and the dispositions of the National Assembly favorable to the ministers.— Your cypher has not been sent hitherto because it required a most confidential channel of conveyance. It is now committed to Mr. Pinckney, who also carries the gazettes, laws & other public papers for you. We have been long without any vessel going to Havre. Some of the Indian tribes have acceded

to terms of peace. The greater part however still hold off, and oblige us to pursue more vigorous measures for war.—I inclose you an extract from a circular letter to our Consuls, by which you will perceive that those in countries where we have no diplomatic representative, are desired to settle their accounts annually with the minister of the U. S. at Paris. This business I must desire you to undertake. The act concerning Consuls will be your guide, & I shall be glad that the 1st of July be the day to which their accounts shall be annually settled, & paid, and that they may be forwarded as soon after that as possible to the office of the Secretary of state, to enter into the general account of his department which it is necessary he should make up always before the meeting of Congress.

P. S. I have said nothing of our whale oil, because I believe it is on a better footing since the Tariff than before. I inclose you a letter from a person in Lyons to Mr. Short, desiring inquiries might be made after a M. de S^{t} Pry, with the result of the inquiries. I am unable to say how you will find the letter writer, as I have no information but what is in the letter itself.

NOTES ON ARTHUR YOUNG'S LETTER[1] J. MSS.

[June 18, 1792.]

Pa. 3. Is the labour (of Negroes @ £9. sterl.) to be commanded in any amount?—if taken by the

[1] Young wrote to Washington concerning American agriculture, and Jefferson undertook to prepare some notes on the subject, resulting in

year it may be commanded in any amount: but not if wanted on particular occasions only as for harvest, for particular dressings of the land, &c.

the above. They were sent to Young, who commented on them as follows:

"Mr. Jefferson's Virginia calculation comes much nearer to the point; but I cannot admit it; he reckons 60*l.* a year increasing value of negroes, and 156*l.* a year rise in value of land. These articles may be fact in certain circumstances but they will not do for comparisons. In the first place, to have a considerable value in slaves, is a hazardous capital; and there is no man in the world who would not give 60*l.* a year on six thousand acres, to be able to change slaves to cows and sheep: he cannot otherwise command labour, and therefore must keep them; but the profit in any other light than labourers, is inadmissible. As to the rise on lands, it may be fair; but taking place equally, perhaps, in Europe, it must not come into the account. During the last ten years, land in England has risen one third in value. Correcting thus Mr. Jefferson's account, his capital pays eleven per cent. as in (D). There are, however, many deductions to be made; as wear and tear of implements, carriage, team, seed, repairs of buildings, white servants, overseers, &c. &c. These ought, as I conjecture, to amount to near 200*l.* a year, which, if so, would reduce the profit in the gross to about eight per cent.

"But I have a heavier objection than this, and which bears upon the pith of the subject. How can Mr. Jefferson produce annually five thousand bushels of wheat, worth 750*l.* by means of a cattle product of only 125*l.*? I do not want to come to America, to know that this is simply impossible: at the commencement of a term it may do, but how long will it last? This is the management that gives such products, as eight and ten bushels an acre. Arable land can yield wheat only by means of cattle and sheep; it is not dung that is wanted so much as a change of products: repose under grasses is the soul of management; and all cleaning and tillage to be given in the year that yields green winter food. By such a system, you may produce, by means of forty oxen and five hundred sheep, five thousand bushels of wheat; and if you raise the oxen to fifty, and sheep to six hundred, you may have so much more wheat; but it is only by increasing cattle that you can increase wheat permanently. 125*l.* from cattle to 750*l.* from wheat, would reduce the finest farm in the world to a caput mortuum; that is to say to ten bushels an acre which must be nearly such."

These comments Washington submitted to Jefferson, who wrote Washington in reply:

Pa. 4. The labour of a negro Mr. Young reckons cent. per cent dearer than the labour of England.— To the hirer of a negro man his hire will cost £9. and

"PHILADELPHIA, June 28, 1793.

"DEAR SIR,—I should have taken time ere this, to have considered the observations of Mr. Young, could I at this place have done it in such a way as would satisfy either him or myself. When I wrote the notes of the last year, I had never before thought of calculating what were the profits of a capital invested in Virginia agriculture. Yet that appeared to be what Mr. Young most desired. Lest therefore, no other of those whom you consulted for him, should attempt such a calculation, I did it; but being at such a distance from the country of which I wrote, and having been absent from that, and from the subject in consideration, many years, I could only, for my facts, recur to my own recollection, weakened by time, and very different applications, and I had no means here of correcting my facts. I, therefore, hazarded the calculation, rather as an essay of the mode of calculating the profits of a Virginia estate, than as an operation which was to be ultimately relied on. When I went last to Virginia, I put the press copy of those notes into the hands of the most skilful and successful farmer in the part of the country of which I wrote. He omitted to return them to me, which adds another impediment to my resuming the subject here. But indeed, if I had them, I could only present the same facts, with some corrections, and some justifications of the principles of calculation. This would not, and, ought not, to satisfy Mr. Young. When I return home, I shall have time and opportunity of answering Mr. Young's inquiries fully. I will first establish the facts, as adapted to the present times, and not to those to which I was obliged to recur by recollection, and I will make the calculation on rigorous principles. The delay necessary for this, will, I hope, be compensated by giving something which no endeavors on my part shall be wanting to make worthy of confidence. In the mean time, Mr. Young must not pronounce too hastily on the impossibility of an annual production of 750*l* worth of wheat, coupled with a cattle product of 125*l*. My object was to state the product of a good farm, under good husbandry, as practised in my part of the country. Manure does not enter into this, because we can buy an acre of new land cheaper than we can manure an old one. Good husbandry with us, consists in abandoning Indian corn and tobacco; tending small grain, some red clover, fallowing, and endeavouring to have, while the lands are at rest, a spontaneous cover of white clover. I do not present this as a culture judicious in itself, but as good, in comparison with what

his subsistence, cloathing & tools £6. Making £15. sterl. or at the most it may sometimes be £18.— To the owner of a negro his labour costs as follows. Suppose a negro man of 25. years of age costs £75. sterling: he has an equal chance to live 30. years according to Buffon's table; so that you lose your principal in 30. years. Then say.

	£	
Int. of £75. annually.....	3.	15
One thirtieth annually of the principal	2.	10
Subsistence, clothes, &c., annually.....	6.	
	12.	5

most people there pursue. Mr. Young has never had an opportunity of seeing how slowly the fertility of the original soil is exhausted, with moderate management of it. I can affirm, that the James river low-grounds, with the cultivation of small grain, will never be exhausted; because we know, that, under that cultivation, we must now and then take them down with Indian corn, or they become, as they were originally, too rich to bring wheat. The high-lands where I live, have been cultivated about sixty years. The culture was tobacco and Indian corn, as long as they would bring enough to pay the labour; then they were turned out. After four or five years rest, they would bring good corn again, and in double that time, perhaps, good tobacco. Then they would be exhausted by a second series of tobacco and corn. Latterly we have begun to cultivate small grain; and excluding Indian corn, and following, such of them as were originally good, soon rise up to fifteen or twenty bushels the acre. We allow that every labourer will manage ten acres of wheat, except at harvest. I have no doubt but the coupling cattle and sheep with this, would prodigiously improve the produce. This improvement, Mr. Young will be better able to calculate than any body else. I am so well satisfied of it myself, that having engaged a good farmer from the head of Elk (the style of farming there you know well), I mean in a farm of about five hundred acres of cleared land, and with a dozen labourers to try the plan of wheat, rye, potatoes, clover, with a mixture of some Indian corn with the potatoes, and to push the number of sheep. This last hint I have taken from Mr. Young's letters, which you have been so kind as to communicate to me. I had never before considered, with

There must be some addition to this to make the labour equal to that of a white man, as I believe the negro does not perform quite as much work, nor with as much intelligence.—But Mr. Young reckons a laboring man in England £8. & his board £16. making £24.

Pa. 5. "In the instances of mountain land, the expressions seem to indicate waste land unbuilt & uninclosed." If Mr. Young has reference here to the notes which Th: J. gave to the President on the subject of mountain land, the following explanation is necessary. The lands therein contemplated are generally about one half cleared of the timber which grew on them, say all the land of the first quality & half that of the middling quality. This half is for the most part inclosed with rail fences which do not last long (except where they are of chestnut) but are easily repaired or renewed. The houses on them for the use of the farm are so slight and of so little worth that they are thrown into the bargain without a separate estimate. The same may be said of the farmer's house, unless it be better than common. When it is of considerable value, it adds to the price of the land, but by no means it's whole value. With respect to the soil I saw no uplands in England comparable to it. My travels there were from Dover to

due attention, the profit from that animal. I shall not be able to put the farm into that form exactly the ensuing autumn, but against another I hope I shall; and I shall attend with precision to the measures of the ground, and to the product, which may, perhaps, give you something hereafter to communicate to Mr. Young, which may gratify him; but I will furnish the ensuing winter, what was desired in Mr. Young's letter of January 17, 1793."

London, & on to Birmingham, making excursions of 20. or 30. miles each way. At Edgehill in Warwickshire my road led me over a red soil sometimes like this, as well as I recollect. But it is too long ago to speak with certainty.

Pa. 7. That "in America farmers look to labour much more than to land, is new to me."—But it is an important circumstance. Where land is cheap, & rich, & labour dear, the same labour, spread in a slighter culture over 100. acres, will produce more profit than if concentrated by the highest degree of cultivation on a small portion of the lands. When the virgin fertility of the soil becomes exhausted, it becomes better to cultivate less & well. The only difficulty is to know at what point of deterioration in the land, the culture should be increased, and in what degree.

Pa. 10. "Can you sell your beef & mutton readily?" The market for them, fresh and in quantity, is not certain in Virginia. Beef well salted will generally find a market, but salted mutton is perhaps unknown.

Pa. 11. "Mutton dearer than beef." Sheep are subject to many diseases which carry them off in great numbers. In the middle & upper parts of Virginia they are subject to the wolf, & in all parts of it to dogs. These are great obstacles to their multiplication. In the middle and upper parts of the country the carcase of the beef is raised on the spontaneous food of the forests, and is delivered to the farmer in good plight in the fall, often fat enough for slaughter. Hence it's cheapness. Probably

however sheep, properly attended to, would be more profitable than cattle as Mr. Young says they have not been attended to as they merited.

Pa. 13. Mr Young calculates the employment of £5040. worth of land and £1200. farmer's capital, making an aggregate capital of £6240. in England, which he makes yield 5. p^{r} cent extra, or 10. p^{r} cent on y^{e} whole. I will calculate, in the Virginia way, the employment of the same capital, on a supposition of good management, in the manner of the country.

1. Supposing negro laborers to be hired.
2. Supposing them to be bought.

1. Suppose labourers to be hired, one half men @ £18. the other half women @ £14. for labor, cloth^{g} (I always mean sterlg money).

Int. of £4160. for 3310. a^{s} of land @ 25/y^{e} acre.....		£208— 0— 0
of $\frac{2080}{6240}$ for farmer's capital of stock, tools, &c.....		104— 0— 0
Taxes @ 7^{d} the acre (I do not know what they are)....		96—10— 0
Hire of 33. labourers @ £16.....		528— 0— 0
		936—10
Produce to be sold annually.		
	£	
Wheat 6600. bushels @ 3/.....	990	
Meat & other articles @ £5. for each laborer.....	165	1155— 0
Net profit over & above the 5. p^{r} cent above charged..		219—10
Add annual rise in the value of lands.....		165—10
Real profit over & above the 3. p^{r} cent above charged.		385—
Which is 6$\frac{1}{6}$ per cent extra, or 11$\frac{1}{3}$ p^{r} cent on the whole capital.		

2. Suppose labourers to be bought, one half men, & one half women @ £60. sterl. on an average.

	£	
Int. of £3125. for 2500. a^{s} of land @ 25/.....		156— 5— 0
of 1562–10. farmer's capital of stock, utensils, &c.		78— 2— 6

	£	
of $\frac{1500}{0157-10}$ for purchase of 25. laborers.....	75	
Subsistence, clothing, &c.....	150	225— 0— 0
[I allow nothing for losses by death, but on the contrary shall presently take credit 4. p^{r} cent p^{r} annum for their increase over & above keep^{g} up their own numbers.]		
Taxes @ 7^{d} the acre.....		72—18— 4
		532— 5—10

Produce to be sold annually.

	£	
Wheat 5000 bush. @ 3/	750	
Meat and other articles @ £5. for each labourer..	125	875— 0— 0
Net profit over & above the 5. p^{r} cent above charged..		342—15—10
Add 5 p^{r} cent annual rise in the value of land.....		156— 5— 0
4. p^{r} cent increase of negroes more y^{n} keep^{g} up original number..		60— 0
Real profit over & above the 5. p^{r} cent above charged..		559— 0—10
Which is 9. p^{r} cent extra, or 14. p^{r} cent on the whole capital.		

In the preceding estimate I have supposed that 200. bushels of wheat may be sold for every labourer employed, which may be thought too high. I know it is too high for common land, & common management, but I know also on good land & with good management it has been done thro' a considerable neighborhood and for many years. On the other hand I have overrated the cost of laboring negroes, and I presume the taxes also are overrated. I have observed that our families of negroes double in about 25. years, which is an increase of the capital, invested in them, of 4. per cent over & above keeping up the original number.

I am unable to answer the queries on page — as to the expenditure necessary to make an acre of forest land maintain one, two, or three sheep. I began an experiment of that kind in the year 1783.

clearing out the under-growth, cutting up the fallen wood but leaving all the good trees. I got through about 20. or 30. acres and sowed it with white clover & green wood, and intended to have gone on through a forest of 4. or 500. acres. The land was excessively rich, but too steep to be cultivated. In spite of total neglect during my absence from that time to this, most of it has done well. I did not note how much labour it took to prepare it; but I am sure it was repaid by the fuel it yielded for the family. The richness of the pasture to be thus obtained, will always be proportioned to that of the land. Most of our forest is either middling, or poor. It's enclosure with a wood fence costs little, as the wood is on the spot.

TO THOMAS PAINE J. MSS.

PHILADELPHIA, June 19. 1792.

DEAR SIR,—I received with great pleasure the present of your pamphlets, as well for the thing itself as that it was a testimony of your recollection. Would you believe it possible that in this country there should be high & important characters who need your lessons in republicanism, & who do not heed them? It is but too true that we have a sect preaching up & pouting after an English constitution of king, lords, & commons, & whose heads are itching for crowns, coronets & mitres. But our people, my good friend, are firm and unanimous in their principles of republicanism & there is no better proof of it than that they love what you write and read it with delight. The printers season every newspaper

with extracts from your last, as they did before from your first part of the *Rights of Man*. They have both served here to separate the wheat from the chaff, and to prove that tho' the latter appears on the surface, it is on the surface only. The bulk below is sound & pure. Go on then in doing with your pen what in other times was done with the sword: shew that reformation is more practicable by operating on the mind than on the body of man, and be assured that it has not a more sincere votary nor you a more ardent well-wisher than Yrs. &c.

TO JOEL BARLOW J. MSS.

PHILADELPHIA June 20, 1792.

DEAR SIR,—Tho' I am in hopes you are now on the Ocean home-bound, yet I cannot omit the chance of my thanks reaching you for your Conspiracy of kings and advice to the privileged orders, the second part of which I am in hopes is out by this time. Be assured that your endeavors to bring the Transatlantic world into the road of reason, are not without their effect here. Some here are disposed to move retrograde and to take their stand in the rear of Europe now advancing to the high ground of natural right. But of all this your friend Mr. Baldwin gives you information, and doubtless paints to you the indignation with which the heresies of some people here fill us.

This will be conveyed by Mr. Pinckney, an honest sensible man & good republican. He goes our Min. Plen. to London. He will arrive at an interesting

moment in Europe. God send that all the nations who join in attacking the liberties of France may end in the attainment of their own. I still hope this will not find you in Europe & therefore add nothing more than assurances of affectionate esteem from Dr. Sir Your sincere friend & servt.

TO JAMES MADISON J. MSS.

PHILADELPHIA, June 21, 1792.

DEAR SIR,—Your No. 1. came to hand two days ago. When I inclosed you the papers of the last week I was too much hurried to write. I now therefore write earlier & inclose only one of Fenno's papers. The residue of the New York election was as follows:

	Clinton.	Jay.
Albany	444	1178
Montgomery	306	424
Herkimer	247	401
Ontario	28	92
Total	8457	8315
		142

The Otsego votes were rejected, about 1000 in number, of which Jay had about 850. say a majority of 700. so that he was really governor by a majority of 500. votes according to his friends.

The Clintonians again tell strange tales about these votes of Otsego.

I inclose you two New York papers which will put you fully in possession of the whole affair. Take care of them if you please, as they make part of a collection. It does not seem possible to defend Clinton

as a just or disinterested man if he does not decline the Office, of which there is no symptom; and I really apprehend that the cause of republicanism will suffer and its votaries be thrown into schism by embarking it in support of this man, and for what? to draw over the antifederalists who are not numerous enough to be worth drawing over.

I have lately seen a letter from —— to —— on receiving his appointment.[1] He pleads guilty to the charge of indiscretion hitherto and promises for the future the most measured circumspection, and in terms which mark him properly & gratefully impressed with the counsel which had been given him pretty strongly as you know. I have made out my table, but instead of setting the proportion of the debt of each country to it's population, I have done it to its revenues. It is as follows:

DATE.	COUNTRY.	PUBLIC DEBT.	Amt. of Rev.	Prop. of Debt to Rev.	Authority and Insurance.
	U. S. of America				
1736	G. Britain	239.154.879 £.Ster.	15.000.000 £.Ster.	16—:1	224
1735	France	3.400.000.000 silver dollrs.	420.000.000 louis	8:1	265
1772	Sweden	60.000.000 florins	11.089.122 florins	5.4:1	59
	Austria	200.000.000 rubles	95.000.000 rubles	2.5:1	157
1785	Russia	40.000.000 £. Ster.	20.000.000 £. Ster.	2:1	40
1774	Portugal	3.575.381 piestas	1.800.000 piestas	2:1	336
1785	Spain	152.000.000 dollars	100.000.000 dollars	1.5:1	317
1769	Denmark	1.400.000	6.272.000 dollars	0.22:1	73
	Prussia		21.000.000		143

[1] Gouverneur Morris to the President.

I have not yet examined into the debt of the U. S. but I suppose it is to be about 20 years revenue, and consequently that tho' the youngest nation in the world we are the most indebted nation also. I did not go into the debt & revenues of the United Netherlands, because they are so jumbled between general & provincial, & because a great deal of their debt, is made by borrowing at low interest & lending it at high, & consequently not only this part is to be struck off from the amount of their debt, but so much of the residue of it also as has its interest paid by this means. —Brandt, the famous Indian is arrived here; he dined with the P. yesterday, will dine with Knox to-day, Hammond on Sunday, the Presidt. on Monday.

TO PETER CARR J. MSS.

PHILADELPHIA June 22, 1792.

DEAR SIR,—I received in due time your favor of May 28. with the notes it contained on the subject of Waste. Your view of the subject as far as it goes, is perfectly proper. Perhaps in such a question in this country, where the husbandry is so different, it might be necessary to go further & enquire whether any difference of this kind should produce a difference in the law. The main objects of the law of waste in England are: 1. to prevent any disguise of the lands which might lessen the reversioner's evidence of title, such as the change of pasture into arable &c. 2. to prevent any deterioration of it, as the cutting down forest, which in England is an injury, so careful is the

law there against permitting a deterioration of the land, that tho' it will permit such improvements *in the same line*, as manuring arable lands, leading water into pasture lands, &c., yet it will not permit improvements *in a different line*, such as erecting buildings, converting pasture into arable &c. lest these should lead to a deterioration. Hence we might argue in Virginia that tho' the cutting down of forest is, in our husbandry, rather an improvement generally, yet it is not so always, and that therefore it is safer never to admit it. Consequently there is no reason for adopting different rules of waste here from those established in England.

Your objection to Ld. Kaims that he is too metaphysical is just, and it is the chief objection to which his writings are liable. It is to be observed also that tho' he has given us what should be the system of equity, yet it is not the one actually established, at least not in all it's parts. The English Chancellors have gone on from one thing to another without any comprehensive or systematic view of the whole field of equity, and therefore they have sometimes run into inconsistencies & contradictions.

Never fear the want of business. A man who qualifies himself well for his calling never fails of employment in it. The foundation you will have laid in legal reading will enable you to take a higher ground than most of your competitors, & even ignorant men can see who it is that is not one of themselves. Go on then with courage, and you will be sure of success; for which be assured no one wishes more ardently, nor has more sincere sentiments of

friendship towards you than Dear Sir Your affectionate friend.

TO JAMES MONROE J. MSS.

PHILADELPHIA, June 23d, 1792.

DEAR SIR,—Supposing the particulars of the New York election interesting to you, I will give you a statement of the votes, as follows:

	Clinton.	Jay.		Clinton.	Jay.
Suffolk.....	481	228	Columbia.....	1303	717
Queen's county	532	288	Renslaer.....	404	717
King's county.	244	92	Washington...	758	471
City & county of N. Y.....	603	739	Saratoga.....	405	461
Orange.....	551	80	Albany.....	444	1178
Dutchess.....	751	945	Montgomery..	306	424
West Chester..	347	824	Herkimer.....	247	401
Richmond.....	106	4	Ontario.....	28	92
Ulster.....	947	654		8457	8315

On the result of these votes Clinton was declared elected. The canvassers set aside the votes of the county of Otsego, where Jay had about 850 Clinton 150, which would have given a majority to Jay. The reason of setting them aside was, that the election was held by the sheriff of the last year, the new one not being yet qualified.

The Jayites say he was sheriff *de facto*, and, therefore, his proceedings, being in favor of public right, are valid: and that it was Clinton's fault that there was not a new sheriff.

The Clintonians answer that a new commission had been in good time delivered to Judge Cooper, the

Bashaw of Otsego, furious partisan of Jay, who, finding the ex-sheriff strongly in favor of Jay & the new one neutral, kept the commission in his pocket: they say that had all the good votes set aside for irregularity in all the counties been admitted, Clinton had a majority, that in Otsego particularly far the the greater part were the votes of persons unqualified, for instance, in the town of Otsego where were only qualified voters, upwards of 500 votes were received for Mr. Jay.—Among the attacks on Clinton has been an endeavor to prove him concerned in McComb's great purchase. They therefore took McComb's deposition.—He swore that Clinton was not, as far as he knew or believed, concerned in that purchase: but that in a purchase he made of ten townships of 10 miles square, each on the St. Lawrence, he had partners, to wit, Gen^{l} Schuyler, Renslaer his son in law, Col^{o} Hamilton, Gen^{l} Knox, Ogden, and two or three others whose names I forget.—Upon the whole it seems probable that Mr. Jay had a majority of the qualified voters, and I think not only that Clinton would have honored himself by declining to accept, and agreeing to take another fair start, but that probably such a conduct would have insured him a majority on a new election. To retain the Office when it is probable the majority was against him is dishonorable. However there is no symptom of his refusing the Office on this election & from the tumultuous proceedings of Mr. Jay's partisans, it seems as if the state would be thrown into convulsions—it has silenced all clamour about their bankruptcies.—Brandt is arrived here.—Nothing else

new or interesting but what the papers will give you. My best affections to Mrs. Monroe, and believe me to be, Dear Sir, your sincere friend and servt.

TO THE SECRETARY OF THE TREASURY J. MSS.
(ALEXANDER HAMILTON)

PHILADELPHIA June 24. 1792.

SIR,—I have the honor to inclose you the answer of the minister of France to the letter I wrote him on the subject of the complaint of Bermuda hundred against the French consul at Norfolk, whereby you will see that he undertakes to have the latter set right. I have not thought it necessary to reply to his observation that 'Le Consul de Norfolk est dans doute obligé de maintenir les loix de France, aussi bien que le Collecteur de Bermude hundred doit faire observer celles des états-unis'; presuming he can only mean when the former do not interfere with the latter. The supremacy of the laws of every country within itself is too well known to be drawn into question. I shall take care however to state to him in conversation that the latitude of his expression if taken in all it's extent, would render it enormous. I have the honour to be with every sentiment of respect, Sir, your most obedt. & most humble servt.

TO JAMES MADISON MAD. MSS.

PHILADELPHIA. June 29. 1792.

DEAR SIR,—I wrote you last on the 21st. The present will cover Fenno of the 23d & 27th. In the

last you will discover Hamilton's pen in defence of the bank, and daring to call the republican party *a faction*. I learn that he has expressed the strongest desire that Marshall should come into Congress from Richmond, declaring that there is no man in Virginia whom he wishes so much to see there; and I am told that Marshall has expressed half a mind to come. Hence I conclude that Hamilton has plyed him well with flattery & sollicitation, and I think nothing better could be done than to make him a judge. I have reason to believe that a regular attack, in phalanx is to be made on the Residence at the next session, with a determination to repeal it if the further assumption is not agreed to. I think this also comes from Hamilton tho' it is thro' two hands, if not more, before it comes to me.

Brandt went off yesterday, apparently in the best dispositions, & with some hopes of effecting peace. A letter received yesterday, from Mr. Short gives the most flattering result of conversations he had had with Claviere & Dumourier. Claviere declared he had nothing so much at heart as to encourage our navigation, & the present system of commerce with us. Agreed they ought immediately to repeal their late proceedings with respect to tobo. & ships, and receive our salted provisions favorably, and to proceed to treat with us on broad ground. Dumourier expressed the same sentiments. Mr. Short had then received notice that G. M. would be there in a few days, and therefore told the ministers that this was only a preliminary conversation on what Mr. Morris would undertake regularly. This ministry, which is

of the Jacobin party cannot but be favorable to us, as that whole party must be. Indeed notwithstanding the very general abuse of the Jacobins, I begin to consider them as representing the true revolution-spirit of the whole nation, and as carrying the nation with them. The only things wanting with them is more experience in business, and a little more conformity to the established style of communication with foreign powers. The latter want will I fear bring enemies into the field, who would have remained at home; the former leads them to domineer over their executive so as to render it unequal to it's proper objects. I sincerely wish our new minister may not spoil our chance of extracting good from the present situation of things. The President leaves this about the middle of July. I shall set out some days later, & have the pleasure of seeing you in Orange. Adieu, my dear Sir.

TO JAMES MADISON MAD. MSS.

PHILADELPHIA, July 3, 1792.

DEAR SIR,—Since my last of June 29, I have received your Nos. 2. & 3. of June 24 & 25. The following particulars occur. Vining has declined offering at the next election. It is said we are to have in his room a Mr. Roach, formerly of the Army, an anti-cincinnatus, and good agricultural man. Smith of S. C. declines also. He has bought a fine house in Charleston for 5000.£ and had determined not even to come to the next session. But his friends it is said

have made him promise to come. One gentleman from S. Carolina says he could not be re-elected. Another says there could be no doubt of his re-election. Commodore Gillon is talked of as his successor. Izard gives out that it is all false that Mr. Smith is so rich as has been pretended, that he is in fact poor, cannot afford to live here, & therefore has retired to Charleston. Some add that he has entered again at the bar. The truth seems to be that they are alarmed, & he driven out of the field, by the story of the modern Colchis. His furniture is gone off from hence. So is Mr. Adam's. Some say he declines offering at the next election. This is probably a mere conjecture founded on the removal of his furniture. The most likely account is that Mrs. Adams does not intend to come again, & that he will take private lodgings. It seems nearly settled with the Treasuro-bankites that a branch shall be established at Richmond; could not a counter-bank be set up to befriend the agricultural man by letting him have money on a deposit of tobo. notes, or even wheat, for *a short time*, and would not such a bank enlist the legislature in it's favor, & against the Treasury bank? The President has fixed on Thursday the 12th for his departure, & I on Saturday the 14th for mine. According to the stages I have marked out I shall lodge at Strode's on Friday the 20th, and come the next morning, if my horses face Adam's mill hills boldly, to breakfast at Orange C. H. and after breakfast will join you. I have written to Mr. Randolph to have horses sent for me on that day to John Jones's about 12 miles from your house, which will enable me to

breakfast the next day (Sunday) at Monticello. All this however may be disjointed by unexpected delays here, or on the road. I have written to Dr. Stewart & Ellicot to procure me *renseignements* on the direct road from Georgetown to Elkner Church which ought to save me 20 or 30 miles.

P. S. I shall write you again a day or two before I leave this.

TO THE COMMISSIONERS OF SPAIN J. MSS.
(VIAR AND JAUDENES)

PHILADELPHIA July 9. 1792.

GENTLEMEN,—Information has been received that the Government of West Florida has established an Agent within the territory of the United States belonging to the Creek Indians, and it is even pretended that that Agent has excited those Indians to oppose the marking a boundary between their district and that of the Citizens of the United States. The latter is so inconsistent with the dispositions to friendship and good neighborhood which Spain has always expressed towards us, with that concert of interest which would be so advantageous to the two nations and which we are disposed sincerely to promote, that we find no difficulty in supposing it erroneous. The sending an Agent within our limits we presume has been done without the authority or knowledge of your government. It has certainly been the usage, where one nation has wished to employ agents of any kind within the limits of another, to obtain the permission of that other, and even to

regulate by convention and on principles of reciprocity, the functions to be exercised by such Agents. It is not to a nation whose dominions are circumstanced as those of Spain in our neighborhood that we need develop the inconveniences of permitting reciprocally the unlicensed mission of Agents into the territories of each other. I am persuaded nothing more is necessary than to bring the fact under the notice of your government in order to it's being rectified, which is the object of my addressing you on this occasion; with every assurance that you will make the proper communications on the subject to your court.

TO THE GOVERNOR OF VERMONT (THOMAS CHITTENDEN) J. MSS.

PHILADELPHIA, July 12th, 1792.

SIR,—I had the honor of inclosing to you on the 9th instant copies of some papers I had received from the British minister here, and I have now that of forwarding some received from him this day. I must renew my entreaties to your Excellency that no innovation in the state of things may be attempted for the present.—It is but lately that an opportunity has been afforded of pressing on the court of Gt. Britain our rights on the question of the posts, and it would be truly unfortunate if any premature measures on the part of your state should furnish a pretext for suspending the negotiations on this subject. I rely therefore that you will see the interest

even of your own state in leaving to the general government the measures for recovering it's rights, and the rather as the events to which they might lead are interesting every state in the highest degree.

TO THE PRESIDENT OF THE UNITED STATES

D. S. MSS.

MONTICELLO July 30. 1792.

DEAR SIR,—I received yesterday the letter you did me the honor to write on the 23d inst. covering one from the Governor of Vermont. As the question which party has a right to complain depends on the fact which party has hitherto exercised jurisdiction in the place where the seizure was made, and the Governor's letter does not ascertain that fact, I think it will be better to wait his answer to my two former letters in which he cannot fail to speak to that point. I inclose a letter just received from Colo. Humphreys; as also one for the Commissioners of the federal territory from myself, covering one from Mr. Blodgett.—The inhabitants of Culpepper are intent on opening a short and good road to the new city. They have had a survey of experiment made along the road I have so much enquired after, by State run church, Champs' race paths & Sangster's tavern to George town, and they have reason to believe they may make it shorter by 20. miles and better than any of the present roads. This once done, the counties from Culpepper Southwardly will take it up probably, and extend it successively towards Carolina.

TO THE PRESIDENT OF THE UNITED STATES J. MSS.

MONTICELLO Sep 9, 1792.

DEAR SIR,—I received on the 2d inst the letter of Aug 23, which you did me the honor to write me; but the immediate return of our post, contrary to his custom, prevented my answer by that occasion. The proceedings of Spain mentioned in your letter are really of a complexion to excite uneasiness, & a suspicion that their friendly overtures about the Missisipi have been merely to lull us while they should be strengthening their holds on that river. Mr. Carmichael's silence has been long my astonishment: and however it might have justified something very different from a new appointment, yet the public interest certainly called for his junction with Mr. Short as it is impossible but that his knolege of the ground of negotiation of persons & characters, must be useful & even necessary to the success of the mission. That Spain & Gr Britain may understand one another on our frontiers is very possible; for however opposite their interests or disposition may be in the affairs of Europe, yet while these do not call them into opposite action, they may concur as against us. I consider their keeping an agent in the Indian country as a circumstance which requires serious interference on our part; and I submit to your decision whether it does not furnish a proper occasion to us to send an additional instruction to Messrs. Carmichael & Short to insist on a mutual & formal stipulation to forbear employing agents or pensioning any persons within each other's limits: and if this be refused, to propose

the contrary stipulation, to wit, that each party may freely keep agents within the Indian territories of the other, in which case we might soon sicken them of the license.

I now take the liberty of proceeding to that part of your letter wherein you notice the internal dissentions which have taken place within our government, & their disagreeable effect on it's movements. That such dissentions have taken place is certain, & even among those who are nearest to you in the administration. To no one have they given deeper concern than myself; to no one equal mortification at being myself a part of them. Tho' I take to myself no more than my share of the general observations of your letter, yet I am so desirous ever that you should know the whole truth, & believe no more than the truth, that I am glad to seize every occasion of developing to you whatever I do or think relative to the government; & shall therefore ask permission to be more lengthy now than the occasion particularly calls for, or could otherwise perhaps justify.

When I embarked in the government, it was with a determination to intermeddle not at all with the legislature, & as little as possible with my co-departments. The first and only instance of variance from the former part of my resolution, I was duped into by the Secretary of the Treasury and made a tool for forwarding his schemes, not then sufficiently understood by me; and of all the errors of my political life, this has occasioned me the deepest regret. It has ever been my purpose to explain this to you, when, from being actors on the scene, we

shall have become uninterested spectators only. The second part of my resolution has been religiously observed with the war department; & as to that of the Treasury, has never been farther swerved from than by the mere enunciation of my sentiments in conversation, and chiefly among those who, expressing the same sentiments, drew mine from me. If it has been supposed that I have ever intrigued among the members of the legislatures to defeat the plans of the Secretary of the Treasury, it is contrary to all truth. As I never had the desire to influence the members, so neither had I any other means than my friendships, which I valued too highly to risk by usurpations on their freedom of judgment, & the conscientious pursuit of their own sense of duty. That I have utterly, in my private conversations, disapproved of the system of the Secretary of the treasury, I acknolege & avow: and this was not merely a speculative difference. His system flowed from principles adverse to liberty, & was calculated to undermine and demolish the republic, by creating an influence of his department over the members of the legislature. I saw this influence actually produced, & it's first fruits to be the establishment of the great outlines of his project by the votes of the very persons who, having swallowed his bait were laying themselves out to profit by his plans: & that had these persons withdrawn, as those interested in a question ever should, the vote of the disinterested majority was clearly the reverse of what they made it. These were no longer the votes then of the representatives of the people, but of deserters from

the rights & interests of the people: & it was impossible to consider their decisions, which had nothing in view but to enrich themselves, as the measures of the fair majority, which ought always to be respected.—If what was actually doing begat uneasiness in those who wished for virtuous government, what was further proposed was not less threatening to the friends of the Constitution. For, in a Report on the subject of manufactures (still to be acted on) it was expressly assumed that the general government has a right to exercise all powers which may be for the *general welfare*, that is to say, all the legitimate powers of government: since no government has a legitimate right to do what is not for the welfare of the governed. There was indeed a sham-limitation of the universality of this power *to cases where money is to be employed.* But about what is it that money cannot be employed? Thus the object of these plans taken together is to draw all the powers of government into the hands of the general legislature, to establish means for corrupting a sufficient corps in that legislature to divide the honest votes & preponderate, by their own, the scale which suited, & to have that corps under the command of the Secretary of the Treasury for the purpose of subverting step by step the principles of the constitution, which he has so often declared to be a thing of nothing which must be changed. Such views might have justified something more than mere expressions of dissent, beyond which, nevertheless, I never went.—Has abstinence from the department committed to me been equally

observed by him? To say nothing of other interferences equally known, in the case of the two nations with which we have the most intimate connections, France & England, my system was to give some satisfactory distinctions to the former, of little cost to us, in return for the solid advantages yielded us by them; & to have met the English with some restrictions which might induce them to abate their severities against our commerce. I have always supposed this coincided with your sentiments. Yet the Secretary of the treasury, by his cabals with members of the legislature, & by high-toned declamation on other occasions, has forced down his own system, which was exactly the reverse. He undertook, of his own authority, the conferences with the ministers of those two nations, & was, on every consultation, provided with some report of a conversation with the one or the other of them, adapted to his views. These views, thus made to prevail, their execution fell of course to me; & I can safely appeal to you, who have seen all my letters & proceedings, whether I have not carried them into execution as sincerely as if they had been my own, tho' I ever considered them as inconsistent with the honor & interest of our country. That they have been inconsistent with our interest is but too fatally proved by the stab to our navigation given by the French.—So that if the question be By whose fault is it that Colo Hamilton & myself have not drawn together? the answer will depend on that to two other questions; whose principles of administration best justify, by their purity, conscientious adherence? and which of us has, not-

withstanding, stepped farthest into the controul of the department of the other?

To this justification of opinions, expressed in the way of conversation, against the views of Colo Hamilton, I beg leave to add some notice of his late charges against me in Fenno's gazette; for neither the stile, matter, nor venom of the pieces alluded to can leave a doubt of their author. Spelling my name & character at full length to the public, while he conceals his own under the signature of "an American" he charges me 1. With having written letters from Europe to my friends to oppose the present constitution while depending. 2. With a desire of not paying the public debt. 3. With setting up a paper to decry & slander the government. 1. The first charge is most false. No man in the U. S. I suppose, approved of every title in the constitution: no one, I believe approved more of it than I did: and more of it was certainly disproved by my accuser than by me, and of it's parts most vitally republican. Of this the few letters I wrote on the subject (not half a dozen I believe) will be a proof: & for my own satisfaction & justification, I must tax you with the reading of them when I return to where they are. You will there see that my objection to the constitution was that it wanted a bill of rights securing freedom of religion, freedom of the press, freedom from standing armies, trial by jury, & a constant Habeas corpus act. Colo Hamilton's was that it wanted a king and house of lords. The sense of America has approved my objection & added the bill of rights, not the king and lords. I

also thought a longer term of service, insusceptible of renewal, would have made a President more independant. My country has thought otherwise, & I have acquiesced implicitly. He wishes the general government should have power to make laws binding the states in all cases whatsoever. Our country has thought otherwise: has he acquiesced? Notwithstanding my wish for a bill of rights, my letters strongly urged the adoption of the constitution, by nine states at least, to secure the good it contained. I at first thought that the best method of securing the bill of rights would be for four states to hold off till such a bill should be agreed to. But the moment I saw Mr. Hancock's proposition to pass the constitution as it stood, and give perpetual instructions to the representatives of every state to insist on a bill of rights, I acknoleged the superiority of his plan, & advocated universal adoption. 2. The second charge is equally untrue. My whole correspondence while in France, & every word, letter, & act on the subject since my return, prove that no man is more ardently intent to see the public debt soon & sacredly paid off than I am. | This exactly marks the difference between Colo Hamilton's views & mine, that I would wish the debt paid to morrow; he wishes it never to be paid, but always to be a thing where with to corrupt & manage the legislature. | 3. I have never enquired what number of sons, relations & friends of Senators, representatives, printers or other useful partisans Colo Hamilton has provided for among the hundred clerks of his department, the thousand excisemen, custom-house

officers, loan officers &c. &c. &c. appointed by him, or at his nod, and spread over the Union; nor could ever have imagined that the man who has the shuffling of millions backwards & forwards from paper into money & money into paper, from Europe to America, & America to Europe, the dealing out of Treasury-secrets among his friends in what time & measure he pleases, and who never slips an occasion of making friends with his means, that such an one I say would have brought forward a charge against me for having appointed the poet Freneau translating clerk to my office, with a salary of 250. dollars a year. That fact stands thus. While the government was at New York I was applied to on behalf of Freneau to know if there was any place within my department to which he could be appointed. I answered there were but four clerkships, all of which I found full, and continued without any change. When we removed to Philadelphia, Mr. Pintard the translating clerk, did not chuse to remove with us. His office then became vacant. I was again applied to there for Freneau, & had no hesitation to promise the clerkship for him. I cannot recollect whether it was at the same time, or afterwards, that I was told he had thought of setting up a newspaper there. But whether then, or afterwards, I considered it as a circumstance of some value, as it might enable me to do, what I had long wished to have done, that is, to have the material parts of the Leyden gazette brought under your eye & that of the public, in order to possess yourself & them of a juster view of the affairs of Europe than could be obtained from

any other public source. This I had ineffectually attempted through the press of Mr. Fenno while in New York, selecting & translating passages myself at first then having it done by Mr. Pintard the translating clerk, but they found their way too slowly into Mr. Fenno's papers. Mr. Bache essayed it for me in Philadelphia, but his being a daily paper, did not circulate sufficiently in the other states. He even tried, at my request, the plan of a weekly paper of recapitulation from his daily paper, in hopes that that might go into the other states, but in this too we failed. Freneau, as translating clerk, & the printer of a periodical paper likely to circulate thro' the states (uniting in one person the parts of Pintard & Fenno) revived my hopes that the thing could at length be effected. On the establishment of his paper therefore, I furnished him with the Leyden gazettes, with an expression of my wish that he could always translate & publish the material intelligence they contained; & have continued to furnish them from time to time, as regularly as I received them. But as to any other direction or indication of my wish how his press should be conducted, what sort of intelligence he should give, what essays encourage, I can protest in the presence of heaven, that I never did by myself or any other, directly or indirectly, say a syllable, nor attempt any kind of influence. I can further protest, in the same awful presence, that I never did by myself or any other, directly or indirectly, write, dictate or procure any one sentence or sentiment to be inserted *in his, or any other gazette*, to which my name was not

affixed or that of my office.—I surely need not except here a thing so foreign to the present subject as a little paragraph about our Algerine captives, which I put once into Fenno's paper.—Freneau's proposition to publish a paper, having been about the time that the writings of Publicola, & the discourses on Davila had a good deal excited the public attention, I took for granted from Freneau's character, which had been marked as that of a good whig, that he would give free place to pieces written against the aristocratical & monarchical principles these papers had inculcated. This having been in my mind, it is likely enough I may have expressed it in conversation with others; tho' I do not recollect that I did. To Freneau I think I could not, because I had still seen him but once, & that was at a public table, at breakfast, at Mrs. Elsworth's, as I passed thro' New York the last year. And I can safely declare that my expectations looked only to the chastisement of the aristocratical & monarchical writers, & not to any criticisms on the proceedings of government: Colo Hamilton can see no motive for any appointment but that of making a convenient partizan. But you Sir, who have received from me recommendations of a Rittenhouse, Barlow, Paine, will believe that talents & science are sufficient motives with me in appointments to which they are fitted: & that Freneau, as a man of genius, might find a preference in my eye to be a translating clerk, & make good title to the little aids I could give him as the editor of a gazette, by procuring subscriptions to his paper, as I did some, before it appeared, & as I have with

pleasure done for the labours of other men of genius. I hold it to be one of the distinguishing excellencies of elective over hereditary succesions, that the talents, which nature has provided in sufficient proportion, should be selected by the society for the government of their affairs, rather than that this should be transmitted through the loins of knaves & fools passing from the debauches of the table to those of the bed.) Colo Hamilton, alias "Plain facts," says that Freneau's salary began before he resided in Philadelphia. I do not know what quibble he may have in reserve on the word "residence." He may mean to include under that idea the removal of his family; for I believe he removed, himself, before his family did, to Philadelphia. But no act of mine gave commencement to his salary before he so far took up his abode in Philadelphia as to be sufficiently in readiness for the duties of the office. As to the merits or demerits of his paper, they certainly concern me not. He & Fenno are rivals for the public favor. The one courts them by flattery, the other by censure, & I believe it will be admitted that the one has been as servile, as the other severe. But is not the dignity, & even decency of government committed, when one of it's principal ministers enlists himself as an anonymous writer or paragraphist for either the one or the other of them?—No government ought to be without censors: & where the press is free, no one ever will. If virtuous, it need not fear the fair operation of attack & defence. Nature has given to man no other means of sifting out the truth either in religion, law,

or politics. I think it is as honorable to the government neither to know, nor notice, it's sycophants or censors, as it would be undignified & criminal to pamper the former & persecute the latter.—So much for the past. A word now of the future.

When I came into this office, it was with a resolution to retire from it as soon as I could with decency. It pretty early appeared to me that the proper moment would be the first of those epochs at which the constitution seems to have contemplated a periodical change or renewal of the public servants. In this I was confirmed by your resolution respecting the same period; from which however I am happy in hoping you have departed. I look to that period with the longing of a wave-worn mariner, who has at length the land in view, & shall count the days & hours which still lie between me & it. In the meanwhile my main object will be to wind up the business of my office avoiding as much as possible all new enterprize. With the affairs of the legislature, as I never did intermeddle, so I certainly shall not now begin. I am more desirous to predispose everything for the repose to which I am withdrawing, than expose it to be disturbed by newspaper contests. If these however cannot be avoided altogether, yet a regard for your quiet will be a sufficient motive for my deferring it till I become merely a private citizen, when the propriety or impropriety of what I may say or do may fall on myself alone. I may then too avoid the charge of misapplying that time which now belonging to those who employ me, should be wholly devoted to their service. If my own justification,

or the interests of the republic shall require it, I reserve to myself the right of then appealing to my country, subscribing my name to whatever I write, & using with freedom & truth the facts & names necessary to place the cause in it's just form before that tribunal. To a thorough disregard of the honors & emoluments of office I join as great a value for the esteem of my countrymen, & conscious of having merited it by an integrity which cannot be reproached, & by an enthusiastic devotion to their rights & liberty, I will not suffer my retirement to be clouded by the slanders of a man whose history, from the moment at which history can stoop to notice him, is a tissue of machinations against the liberty of the country which has not only received and given him bread, but heaped it's honors on his head.—Still however I repeat the hope that it will not be necessary to make such an appeal. Though little known to the people of America, I believe that, as far as I am known, it is not as an enemy to the republic, nor an intriguer against it, nor a waster of it's revenue, nor prostitutor of it to the purposes of corruption, as the American represents me; and I confide that yourself are satisfied that, as to dissensions in the newspapers, not a syllable of them has ever proceeded from me; & that no cabals or intrigues of mine have produced those in the legislature, & I hope I may promise, both to you & myself, that none will receive aliment from me during the short space I have to remain in office, which will find ample employment in closing the present business of the department.—Observing that letters written

at Mount Vernon on the Monday, & arriving at Richmond on the Wednesday, reach me on Saturday, I have now the honor to mention that the 22d instant will be the last of our post-days that I shall be here, & consequently that no letter from you after the 17th, will find me here. Soon after that I shall have the honor of receiving at Mount Vernon your orders for Philadelphia, & of there also delivering you the little matter which occurs to me as proper for the opening of Congress, exclusive of what has been recommended in former speeches, & not yet acted on. In the meantime & ever I am with great and sincere affection & respect, dear Sir, your most obedient and most humble servant.

TO ARCHIBALD STUART [1]

MONTICELLO, Sep 9. 1792.

DEAR SIR,—I wrote you a long letter from Philadelphia early in the summer, which would not now have been worth recurring to, but that I therein asked the favor of you to sound Mr. Henry on the subject you had written to me on, to wit, the amendment of our constitution, and to find whether he would not approve of the specific amendments therein mentioned, in which case the business would be easy. If you have had any conversation with him on the subject I will thank you for the result. As I propose to return from my present office at the close of the

[1] From the original in the possession of the Virginia Historical Society.

ensuing session of Congress, & to fix myself once more at home, I begin to feel a more immediate interest in having the constitution of our country fixed, & in such a form as will ensure a somewhat greater certainty to our laws, liberty, & property, the first & last of which are now pretty much afloat, & the second not out of the reach of every enterprize. I set out for Philadelphia about the 20th, and would therefore be happy to hear from you before that. I am with great & sincere esteem, Dear Sir Your constant friend & servt.

TO CHARLES CLAY J. MSS.

MONTICELLO, Sep. 11, 1792.

DEAR SIR,—Your favor of Aug. 8, came duly to hand, and I should with pleasure have done what you therein desired, as I ever should what would serve or oblige you; but from a very early period of my life I determined never to intermeddle with elections of the people, and have invariably adhered to this determination. In my own country, where there have been so many elections in which my inclinations were enlisted, I yet never interfered. I could the less do it in the present instance, your people so very distant from me, utterly unknown to me, & to whom I also am unknown; and above all, I a stranger, to presume to recommend one who is well known to them. They could not but put this question to me, "who are you, pray?" In writing the letter to you on the former occasion, I went further than I had ever before done, but that was addressed to yourself

to whom I had a right to write, and not to persons either unknown to me or very capable of judging for themselves. I have so much reliance on your friendship and candor as not to doubt you will approve of my sentiments on this occasion, & be satisfied they flow from considerations respecting myself only, & not you to whom I am happy on every occasion of testifying my esteem. I hope to see you in Bedford about May next, and am with great attachment, Dear Sir, your friend & servt.

TO EDMUND RANDOLPH J. MSS.

MONTICELLO, September 17, 1792.

MY DEAR SIR,—The last post brought me your favor of the 26th of August; but it brought me at the same time so much business to be answered by return of post, and which did not admit of delay, that I was obliged to postpone the acknowledgment of yours. I thank you sincerely for what respects myself. Though I see the pen of the Secretary of the Treasury plainly in the attack on me, yet, since he has not chosen to put his name to it, I am not free to notice it as his. I have preserved through life a resolution, set in a very early part of it, never to write in a public paper without subscribing my name, and to engage openly an adversary who does not let himself be seen, is staking all against nothing. The indecency too of newspaper squabbling between two public ministers, besides my own sense of it, has drawn something like an injunction from another quarter. Every fact

alleged under the signature of "an American" as to myself is false, and can be proved so; and perhaps will be one day. But for the present, lying and scribbling must be free to those mean enough to deal in them, and in the dark. I should have been setting out to Philadelphia within a day or two, but the addition of a grandson and indisposition of my daughter will probably detain me here a week longer. My best respects to Mrs. Randolph, and am, with great and sincere esteem, dear Sir, your affectionate friend and servant.

TO JAMES MADISON MAD. MSS.

MONTICELLO, Sep. 17, 1792.

MY DEAR SIR,—I thank you for the perusal of the two letters which are now inclosed. I would also have inclosed Fenno's two last papers but that Mr. Randolph, who has them, has rode out, if he returns in time they shall be sent you by the bearer. They contain nothing material but the Secretary's progress in paying the national debt, and attacks and defences relating to it. The simple question appears to me to be what did the Public owe, principal and interest, when the Secretary's taxes began to run? If less, it must have been paid, but if he was paying old debts with one hand & creating new ones with the other, it is such a game as Mr. Pitt is playing. My granddaughter has been at death's door. The Doctor left us only this morning. She is now, we think, out of danger. While we sent for him for one patient, two others were prepared for him, to wit,

my daughter & a grandson which she produced. All are now doing well, yet I think I shall not be able to leave her till about Tuesday, and even then it will depend on the little accidents to which her present situation leaves her liable. Adieu.

TO THE PRESIDENT OF THE UNITED STATES [1]

J. MSS.

MONTICELLO, Sep. 18, 1792, 2 o'clock P.M.

DEAR SIR,—Your express is this moment arrived with the Proclamation on the proceedings against the laws for raising a revenue on distilled spirits, and I return it herein inclosed with my signature. I think if instead of the words "to render laws dictated by weighty reasons of public exigency & policy as acceptable as possible" it stood "to render the laws as acceptable as possible" it would be better. I see no other particular expressions which need alteration. I am sincerely sorry to learn that such proceedings have taken place; and I hope the proclamation will lead the persons concerned into a regular line of application which may end either in an amendment of the law, if it needs it, or in their conviction that it is right. If the situation of my daughter (who is in the straw) admits it, I propose to set out about a week hence, & shall have the honour of taking your commands for Philadelphia. I have now that of being with great & sincere respect & attachment, Dr. Sir, Your most obdt. & most humble servt.

[1] This letter is printed in Hamilton's *Works of Hamilton*, IV., 314, as written to Hamilton, and the termination slightly changed.

P. S. The express is detained out about twenty minutes.

TO JAMES MADISON MAD. MSS.

GEORGETOWN, Oct. 1. 1792.

MY DEAR SIR,—I called at Gunstonhall, the proprietor just recovering from a dreadful attack of the cholic. He was perfectly communicative, but I could not, in discretion let him talk as much as he was disposed. I proceeded to Mount Vernon & had a full free & confidential conversation with the President, the particulars shall be communicated when I see you. He declares himself quite undecided about retiring, desirous to do so, yet not decided if strong motives against it exist. He thinks if he declares a month before the day of election it will be sufficient; consequently that he may make his declaration even after the meeting of Congress.

Bishop Madison whom I met here is just stepping into the stage, therefore I can only add assurances of my sincere affection.

TO MRS. CHURCH [1]

PHILADELPHIA, Oct. 1792.

DEAR MAD.—Your favor of July 6. was to have found me here but I had departed before it reached here. It followed me home, & of necessity the enquiries of our fr[d] M[d] de Corny was obliged to await mrs M's arrival at her own house. This was delayed

[1] From a copy in the possession of Miss S. N. Randolph.

longer than was expected so that by the time I could make the enquiries, I was looking again to my return to Philada. This must apologize for the delay which has taken place. Mrs M tells me that M. de C. was at one time in extreme distress, her revenue being in rents & then pd in assignats worth nothing. Since their abolition however, she receives her rents in cash & is now entirely at her ease. She lives in hired lodgings furnished by herself and everything about her as nice as you know she always had. She visited mrs M familiarly & freely in a family way, but would never dine when she had company nor remain if company came. She speaks seriously sometimes of a purpose to come to America, but she surely mistakes a wish for a purpose. You & I know her [*illegible*] too well, & her horror of the sea, to believe she could pass or attempt the Atlantic. Mrs M could not give me her address, so as to enable me to write to her, in all events it is a great consol^{n} that her situation is easy. We have here a mr Niemcewitz a polish gent. who was with us at Paris when M Cosway was there, and who was of her society in Lond. last summer. He mentions the loss of her daur the gloom into which that & other circumstances have thrown her, that it has taken the hue of religion, that she is solely devoted to religious exercises & superintend^{t} of a school she has instituted for catholic chdrn. but that she still speaks of her friends here with tenderness & desire. Our lres have been rare, but they have let me see that her gaiety was gone, & her mind entirely placed on a world to come. I have recd. from my young frd Cath a letter which gratifies me

much as it proves that our friendly impressions have not grown out of her memory. I am indebted to her too for an acqu with your son whose connections suffice to raise the strongest prepossessions with me in his favor. Be so good as to present my respects to mr C. I hope he will find the state of society different in N. Y. from what it is in this place. Party animosities here have raised a wall of sepern between those who differ in political sentim[ts].[1] They must love misery indeed who would rather at the sight of an honest man feel the torment of hatred & aversion than the benign spasms of benevolence & esteem. Accept assurances of the unalterable attachment of your sincere & affect friend & servt.

TO THE U. S. MINISTER TO GREAT BRITAIN J. MSS.

(THOMAS PINCKNEY)

PHILADELPHIA, Oct 12, 1792,

DEAR SIR—Your favor of Aug 7 came to hand on the 6th inst, and gave me the first certain information of your safe arrival. Mr. Otto being about to sail for London, furnishes me with an opportunity of sending the newspapers for yourself and Mr. Barclay, & I avail myself of it chiefly for this purpose,

[1] Jefferson has here struck out the following lines: "the oldest friends will cross the street to avoid meeting each other. People must have a wonderful propensity to self-torment who can prefer the harsher feelings of the mind, who would rather that."

There is a tradition to this day in Philadelphia that so strongly ran the class feeling against Jefferson that Logan, Thomson, and Rittenhouse were his only social equals who did not exclude him from the hospitality of their homes.

as my late return from Virginia and the vacation of Congress furnishes little new & important for your information. With respect to the Indian war, the summer has been chiefly employed in our part on endeavors to persuade them to peace, in an abstinence from all offensive operations in order to give those endeavors a fairer chance, and in preparation for activity, the ensuing season, if they fail. I believe we may say these endeavors have all failed, or probably will do so.—The year has been rather a favorable one for our agriculture. The crops of small grain were generally good. Early frosts have a good deal shortened those of tobacco & Indian corn, yet not so as to endanger distress. From the South my information is less certain, but from that quarter you will be informed thro' other channels. I have a pleasure in noting this circumstance to you, because the difference between a plentiful and a scanty crop more than counterpoises the expenses of any campaign. Five or six plentiful years, successively, as we have had, have most sensibly ameliorated the condition of our country; and uniform laws of commerce introduced by our new government have enabled us to draw the whole benefits of our agriculture.—I inclose you the copy of a letter from Messrs. Blow & Milhaddo, merchants of Virginia, complaining of the taking away of their saylors on the coast of Africa, by the commander of a British armed vessel. So many instances of this kind have happened that it is quite necessary that their government should explain themselves on the subject, and be led to disavow & punish such conduct. I leave

to your discretion to endeavor to obtain this satisfaction by such friendly discussions as may be most likely to produce the desired effect, and secure to our commerce that protection against British violence, which it has never experienced from any other nation. No law forbids the seaman of any country to engage in time of peace on board a foreign vessel; no law authorizes such seaman to break his contract, nor the armed vessels of his nation to interpose force for his rescue. I shall be happy to hear soon that Mr. B. is gone on the service on which he was ordered.

TO THE U. S. COMMISSIONERS TO SPAIN J. MSS.
(CARMICHAEL AND SHORT)

PHILADELPHIA, October 14, 1792.

GENTLEMEN,—Since my letters of March 18th & April 24 (which have been retarded so unfortunately) another subject of conference and Convention with Spain, has occurred. You know that the frontiers of her Provinces, as well as of our States, are inhabited by Indians holding justly the right of occupation, and leaving to Spain and to us only the claim of excluding other nations from among them, and of becoming ourselves the purchasers of such portions of land from time to time as they chuse to sell. We have thought that the dictates of *interest*, as well as *humanity* enjoined mutual endeavors with those Indians to live in peace with both nations, and we have scrupulously observed that conduct. Our Agent with the Indians bordering on the territories

of Spain, has a standing instruction to use his best endeavors to prevent them from committing acts of hostility against the spanish settlements. But whatever may have been the conduct or orders of the *government* of Spain, that of their officers in our neighborhood has been indisputably unfriendly and hostile to us. The papers enclosed will demonstrate this to you. That the Baron de Carondelet their chief Governor at New Orleans has excited the Indians to war on us; that he has furnished them with abundance of arms and ammunition, and promised them whatever more shall be necessary I have from the mouth of him who had it from his own mouth. In short, that he is the sole source of a great and serious war now burst out upon us, and from Indians who we know were in peaceable dispositions towards us, till prevailed on by him to commence the war, there remains scarcely room to doubt. It is become necessary that we understand the real policy of Spain on this point. You will, therefore, be pleased to extract from the enclosed papers such facts as you think proper to be communicated to that Court, and enter into friendly but serious expostulations on the conduct of their officers; for we have equal evidence against the Commandants of other posts in West Florida, though they being subordinate to Carondelet, we name him as the source. If they disavow his conduct, we must naturally look to their treatment of him as the sole evidence of their sincerity. But we must look further. It is a general rule that no nation has a right to keep an agent within the limits of another, without the consent of that

other, and we are satisfied it would be best for both Spain and us to abstain from having agents or other persons in our employ or pay among the savages inhabiting our respective territories, whether as subjects or independent. You are, therefore, desired to propose and press a stipulation to that effect. Should they absolutely decline it, it may be proper to let them perceive, that as the right of keeping Agents exists on both sides, or on neither, it will rest with us to reciprocate their own measures. We confidently hope that these proceedings are unauthorized by the government of Spain, and in this hope, we continue in the dispositions formerly expressed to you, of living on terms of the best friendship and harmony with that country, of making their interests, in our neighborhood, our own, and of giving them every proof of this except the abandonment of those essential rights which you are instructed to insist on.

PARAGRAPHS FOR PRESIDENT'S MESSAGE[1] J. MSS.

[October 15, 1792.]

The interests of a nation, when well understood, will be found to coincide with their moral duties.

[1] In a paper dated Nov. 1, 1792, Jefferson suggested an alteration in this paper, as follows:

"Instead of the paragraph 'The interests of a nation &c.—within our own,' formerly proposed, the following substitute is thought better.

"All observations are unnecessary on the value of peace with other nations. It would be wise however, by timely provisions, to guard against those acts of our own citizens, which might tend to disturb it,

Among these it is an important one to cultivate habits of peace & friendship with our neighbors. To do this we should make provision for rendering the justice we must sometimes require from them. I recommend therefore to your consideration. Whether the laws of the Union should not be extended to restrain our citizens from committing acts of violence within the territories of other nations, which would be punished were they committed within our own.—And in general the maintenance of a friendly intercourse with foreign nations will be presented to your attention by the expiration of the law for that purpose, which takes place, if not renewed, at the close of the present session.

In execution of the authority given by the legislature, measures have been taken for engaging some artists from abroad to aid in the establishment of our mint; others have been employed at home; provision has been made of the requisite buildings, and these are now putting into proper condition for the purposes of the establishment. There has been also a small beginning in the coinage of the half dimes & cents, the want of small coins in circulation calling our first attentions to them.

and to put ourselves in a condition to give that satisfaction to foreign nations, which we may sometimes have occasion to require from them. I particularly recommend to your consideration the means of preventing those aggressions by our citizens on the territory of other nations, and other infractions of the law of nations, which, furnishing just subject of complaint, might endanger our peace with them.—And in general the maintenance &c."

TO THE U. S. MINISTER TO FRANCE J. MSS.
(GOUVERNEUR MORRIS)

PHILADELPHIA Oct 15, 1792.

SIR,—I have duly received your favor of July 10, No. 4, but no other N° preceding or subsequent. I fear therefore that some miscarriage has taken place. The present goes to Bordeaux under cover to Mr. Fenwick who I hope will be able to give it a safe conveyance to you. I observe that you say in your letter that "the marine department is to treat with you for supplies to S. Domingo." I presume you mean "supplies of *money*" and, not that our government is to furnish supplies of *provisions* &c. specifically, or employ others to do it: this being a business into which they could not enter. The payment of money here to be employed by *their own agents* in purchasing the produce of our soil is a desirable thing.—We are informed by the public papers that the late constitution of France, formally notified to us, is suspended, and a new Convention called. During the time of this suspension, & while no legitimate government exists, we apprehend we cannot continue the payments of our debt to France, because there is no person authorized to receive it, and to give us an unobjectionable acquittal. You are therefore desired to consider the paiment as suspended until further orders. Should circumstances oblige you to mention this (which it is better to avoid if you can) do it with such solid reasons as will occur to yourself & accompany it with the most friendly declarations that the suspension does not proceed from any wish in us to delay the payment,

the contrary being our wish, nor from any desire to embarras or oppose the settlement of their government in that way in which their nation shall desire it: but from our anxiety to pay this debt justly & honorably, and to the persons really authorized by the nation (to whom we owe it) to receive it for their use. Nor shall this suspension be continued one moment after we can see our way clear out of the difficulty into which their situation has thrown us. That they may speedily obtain liberty, peace & tranquillity is our sincere prayer. * * *

TO WILLIAM SHORT [1]

October 16, 1792.

* * * You complain of silence and reserve on my part with respect to the diplomatic nominations in which you are interested. Had you been here there should have been no silence or reserve, and I long for the moment when I can unbosom to you all that passed on that occasion. But to have trusted such communications to writing, and across the Atlantic, would have been an indiscretion which nothing could have excused. I dropped you short and pregnant sentences from time to time as, duly pondered, would have suggested to you such material circumstances as I knew. You say that silence and reserve were not observed as to Mr. Morris, who knew he was to be appointed. No man upon earth knew he was to be appointed 24 hours before he was appointed but

[1] From the *Southern Bivouac*, II., 434.

the President himself, and he who wrote Mr. Morris otherwise wrote him a lie. It may be asked how I can affirm that nobody else knew it. I can affirm it from my knowledge of the P's character, and from what passed between us.

The people of Virginia are beginning to call for a new constitution for their State. This symptom of their wishes will probably bring over Mr. Henry to the proposition. He has been the great obstacle to it hitherto; but you know he is always alive to catch the first sensation of the popular breeze, that he may take the lead of that which in truth leads him. * * *

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA, Oct. 16, 1792.

SIR,—I am to acknolege the receipt of your letter of the 9th inst. proposing a stipulation for the abolition of the practice of privateering in times of war. The benevolence of this proposition is worthy of the nation from which it comes, & our sentiments on it have been declared in the treaty to which you are pleased to refer, as well as in some others which have been proposed. There are in those treaties some other principles which would probably meet the approbation of your government, as flowing from the same desire to lessen the occasions & the calamities of war. On all of these as well as on those amendments to our treaty of commerce which might better it's conditions with both nations, and which

the National assembly of France has likewise brought into view on a former occasion, we are ready to enter into negotiation with you, only proposing to take the whole into consideration at once. And while contemplating provisions which look to the event of war, we are happy in feeling a conviction that it is yet at a great distance from us, & in believing that the sentiments of sincere friendship which we bear to the nation of France are reciprocated on their part. Of these our dispositions be so good as to assure them on this & all other occasions, & to accept yourself those sentiments of esteem & respect with which I have the honor to be Sir, your most obedt. & most humble servt.

TO THE PRESIDENT OF THE UNITED STATES

MON. MSS.

PHILADELPHIA, Oct. 17. 1792.

SIR,—In a letter from Monticello I took the liberty of saying that as soon as I should return here where my letter books were, I would take the liberty of troubling you with the perusal of such parts of my correspondence from France as would shew my genuine sentiments of the new constitution. When I arrived in Philadelphia, the 5th inst., I found that many of my letters had been already put into the papers, by the gentleman possessed of the originals, as I presume, for not a word of it had ever been communicated to me, and the copies I had retained were under a lock of which I had the key. These publications are genuine, and render it unnecessary to give

you any further trouble than to see extracts from two or three other letters which have not been published, and the genuine letter for the payment of the French debt. Pardon my adding this to so many troubles as you have.[1] I think it necessary

[1] Copy of a paper enclosed to the President, Oct., 1792.

"*Catullus, Fenno, Sep. 19.*—I proceed now to state the *exact tenor* of the advice which Mr. Jeff. gave to Congress respecting the transfer of the debt due to France to a company of Hollanders. After mention of an offer which had been made by such a company for the purchase of the debt he concludes with these extraordinary expressions. 'If there is a danger of the Public payments not being punctual *I submit whether* it may not be better that the discontents which would then arise should be transferred from a court of whose good will we have so much need to the breasts of a private company.' The above is *an extract* which was made from the letter in Feb. 1787.—The genuineness of the foregoing extract may be depended on."

"Paris Sep. 26. 1786.—It being known that M. de Calonne the minister of finance for this country is at his wits end how to raise supplies for the ensuing year, a proposition has been made by a Dutch company to purchase the debt of the U. S. to this country for 20 millions of livres in hand. His necessities dispose him to accede to the proposition, but a hesitation is produced by the apprehension that it might lessen our credit in Europe, & perhaps be disagreeable to Congress. I have been consulted hereon by the Agent for that company. I informed him that I could not judge what effect it might have on our credit, & was not authorized either to approve or disapprove of the transaction. I have since reflected on this subject. If there be a danger that our payments may not be punctual, it might be better that the discontents which would thence arise should be transferred from a court of whose good will we have so much need to the breasts of a private company, *but* it has occurred to me that we might find occasion to do what would be grateful to this court and establish with them a confidence in our honor. I am informed that our

you should know my real opinions that you may know how to make use of me, and it is essential to my tranquillity not to be mis-known to you. I hope it is the last time I shall feel the necessity of asking your attention to a disagreeable subject.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

Oct. 23, 1792.

Th: Jefferson presents his respectful compliments to Mr. de Ternant—He has examined again with care the commission of M. de la Forest, and finds it

> credit in Holland is sound, might it not be possible then to borrow there the four & twenty millions due to this country, & thus pay them their whole debt at once. This would save them from any loss on our account, nor is it liable to the objection of impropriety in creating new debts before we have more certain means of paying them; it is only transferring a debt from one creditor to another, & removing the causes of discontent to persons with whom they would do us less injury. Thinking that this matter is worthy the attention of Congress I will endeavor that the negotiation shall be retarded till it may be possible for me to know their decision, which therefore I will take the liberty of praying immediately."

Neither the quotation used by Hamilton nor Jefferson's fuller extract follows the text of the original letter exactly, each being slightly changed to accentuate or palliate the suggestion. See also the reference to this matter in the letter to Madison of March, 1793.

impossible to consider it as anything more than a Commission of Consul General for N. York, Jersey, Pensylva, & Delaware. If any thing more has been intended, the error has been in those who drew the commission, and this error we are not authorised to correct. Being corrected by a new commission, we shall be very happy to render the Exequatur conformable to that, as the one now inclosed is to the present commission. M. de Ternant will see on the next page an analysis of the present commission & some observations on it.[1]

TO THE COMMISSIONERS OF SPAIN J. MSS.
(VIAR AND JAUDENES)

PHILADELPHIA November 1st, 1792.

GENTLEMEN,—I have now to acknowledge the receipt of your favor of October the 29th, which I have duly laid before the President of the United States, and in answer thereto, I cannot but observe that some parts of it's contents were truly unexpected. On what foundation it can be supposed that we have menaced the Creek nation with de-

[1] "Observations—The first clause to this commission, specifies the jurisdiction of Mr. de la Forest as *Consul general for New York, Jersey, Pensva & Delaware.* All the subsequent clauses use the restrictive words *la dite charge, la dite qualité*, referring clearly to the description in the first clause, except the last one, le *dit* S^r. la Forest de la charge, not repeating the word *dite* before *charge*, yet it is impossible to understand it but as referring to the preceeding *charge*. To consider the body of the commission as a commission of Consul general for N. Y. Jers. Pens. & Del. and the clause of *Nous Prions, &c.* as another commission to be Consul general over all the U. S. would be against every rule of construction. The king cannot be supposed to pray us to receive him as Consul general *over all the U. S.* He had not *established* him in the preceeding part but as *Consul gen^l. of N. Y. Jers. Pens. & Del.*"

struction during the present autumn, or at any other time, is entirely inconceivable. Our endeavors, on the contrary, to keep them at peace, have been earnest, persevering, and notorious, and no expense has been spared which might attain that object. With the same views to peace, we have suspended, now more than a twelvemonth, the marking a boundary between them and us, which had been fairly, freely, and solemnly established with the Chiefs whom they had deputed to treat with us on that subject; we have suspended it, I say, in the constant hope, that taking time to consider it in the Councils of their nation, and recognizing the Justice and reciprocity of it's conditions, they would at length, freely concur in carrying it into execution. We agree with you, that the interests which either of us have in the proceedings of the other, with this nation of Indians, is a proper subject of discussion at the negotiation to be opened at Madrid, and shall accordingly give the same in charge to our Commissioners there. In the meantime we shall continue sincerely to cultivate the peace and prosperity of all the parties, being constant in the opinion that this conduct, reciprocally observed, will most increase the happiness of all.

TO THE PRESIDENT OF THE UNITED STATES J. MSS.

PHILADELPHIA November 2d, 1792.

SIR,—The letter of October 29th, from Messieurs Viar & Jaudenes, not expressing the principle on which their government interests itself between the

United States and the Creeks, I thought it of importance to have it ascertained. I therefore called on those gentlemen, and entered into explanations with them. They assured me, in our conversation, that, supposing all question of boundary to be out of the case, they did not imagine their government would think themselves authorized to take under their protection any nation of Indians, living within limits confessed to be ours; and they presumed that any interference of theirs, with respect to the Creeks, could only arise out of the question of disputed territory, now existing between us; that, on this account, some part of our treaty with the Creeks had given dissatisfaction. They said, however, that they were speaking from their own sentiments only, having no instructions which would authorize them to declare those of their Court; but that they expected an answer to their letters covering mine of July 9th, (erroneously cited by them as of the 11th.) from which they would probably know the Sentiments of their Court. They accorded entirely in the opinion that it would be better that the two nations should mutually endeavor to preserve each the peace of the other; as well as their own, with the neighboring Tribes of Indians.

I shall avail myself of the opportunity, by a vessel which is to sail in a few days, of sending proper information and instructions to our Commissioners on the subject of the late, as well as of future interferences of the Spanish officers, to our prejudice with the Indians, and for the establishment of common rules of conduct for the two nations.

TO THOMAS MANN RANDOLPH J. MSS.

PHILADELPHIA, Nov. 2d, 1792.

DEAR SIR,—I received yesterday your favor of Oct. 22, and am much relieved by the favorable account of dear Anne's health. The journey you meditate will probably be of some service to her. It is more doubtful as to the young hero, as at his age they stand travelling worse. However the short stages you propose may prevent injury. Colº & Mrs. Monroe arrived yesterday as also Mr. Madison. The members of Congress begin to drop in, and the winter's campaign opens on Monday. The less they do, & the more they leave to their successors, the better in my opinion.

The election of this state has had an issue very favorable to the republican wishes. The monocrats of this place (who are few tho' wealthy & noisy) are *au desespoir*. The nearer I approach the term of my relief from their contests the more impatiently I bear them. They have kept up the ball with respect to myself till they begin to be tired of it themselves. Their chief object was to influence the election of this state, by persuading them there was a league against the government, and as it was necessary to designate a head to the league, they did me that honour. This indulged at the same time the personal enmity of a particular gentleman, who has written & written under all sorts of shapes & signatures without much advancing the cause of his part. Tho' I have no reason to be dissatisfied with the impression made, yet I have too many sources of happiness at home, and of the tranquil kind which are alone

happiness to me, not to wish for my release. Maria is well. Present my affections to my dear Martha, and believe me to be most sincerely your's &c.

TO THE U. S. COMMISSIONERS TO SPAIN[1] J. MSS.
(CARMICHAEL AND SHORT)

PHILADELPHIA Nov 3, 1792.

GENTLEMEN,—I wrote you on the 14th of last month, since which some other incidents and documents have occurred bearing relation to the subject of that letter. I therefore now inclose you a duplicate of that letter.

"Copy of a letter from the Govr. of Georgia, with the deposition it covered of a Mr. Hull & an original passport signed by Olivier wherein he stiles himself Commissary for his Catholic majesty with the Creeks.

"Copy of a letter from Messrs. Viar & Jaudenes to myself, dated Oct. 29. with that of the extract of a letter of Sep. 24. from the Baron Carondelet to them.

[1] Washington wrote to Jefferson concerning this as follows:

"PHILADELPHIA Novr 3d 1792.

"DEAR SIR,—Your letter to Messrs. Carmichael and Short (now returned) is full & proper.—I have added a word or two with a pencil, which may be inserted or not as you shall think best.—The intention of them is to do away the charge of Sovereignty over more than are within our own territory.

"The erazures from the Speech as you advise are made, except exchange the word 'high' for 'just.' If facts will justify the former (as I think they indubitably do), policy, I conceive, is much in its favor:—For while so many unpleasant things are announced as the Speech contains, it cannot be amiss to accompany them with communications of a more agreeable nature.—I am always—Yours."

"Copy of my answer of Nov. 1. to them, and

"Copy of a letter from myself to the President, stating a conversation with those gentlemen."

From these papers you will find that we have been constantly endeavoring by every possible means to keep peace with the Creeks, that in order to do this we have even suspended & still suspend the running a fair boundary between them & us, as agreed to us by themselves, & having for object the precise definition of their & our lands, so as to prevent encroachment on either side, & that we have constantly endeavored to keep them at peace with the Spanish settlements here; that Spain on the contrary, or at least the officers of her governments, since the arrival of the Baron de Carondelet, has undertaken to keep an Agent among the Creeks, has excited them, & the other Southern Indians to commence a war against us, has furnished them with arms & ammunition for the express purpose of carrying on that war, and prevented the Creeks from running the boundary which would have removed the source of differences from between us. Messrs. Viar & Jaudenes explain the ground of interference on the fact of the Spanish claim to that territory, and on an article in our treaty with the Creeks putting themselves under our protection. But besides that you already know the nullity of their pretended claim to the territory, they had themselves set the example of endeavoring to strengthen that claim by the treaty mentioned in the letter of the Baron de Carondelet, and by the employment of an Agent among them.—The establishment of our boundary, committed to you, will, of

course, remove the grounds of all future pretence to interfere with the Indians *within our territory;* and it was to such only that the treaty of New York stipulated protection; for we take for granted that Spain will be ready to agree to the principle that neither party has a right to stipulate protection or interference with the Indian nations inhabiting the territory of the other. But it is extremely material also with sincerity & good faith to patronize the peace of each other with the neighboring savages. We are quite disposed to believe that the late wicked excitements to war have proceeded from the Baron de Carondelet himself, without authority from his court. But if so, have we not reason to expect the removal of such an officer from our neighborhood, as an evidence of the disavowal of his proceedings. He has produced against us a serious war. He says in his letter indeed that he has suspended it. But this he has not done, nor possibly can he do it. The Indians are more easily engaged in a war than withdrawn from it. They have made the attack in force on our frontiers, whether with or without his consent, and will oblige us to a severe punishment of their aggression. We trust that you will be able to settle principles of friendly concert between us & Spain with respect to the neighboring Indians: & if not that you will endeavor to apprize us of what we may expect that we may no longer be tied up by principles which, in that case would be inconsistent with duty & self-preservation.

TO THE U. S. MINISTER TO FRANCE J. MSS.
(GOUVERNEUR MORRIS)

PHILADELPHIA, NOV. 7, 1792.

DEAR SIR,—My last to you was of the 15th of Oct since which I have received your Nos. 1, 2, 3, 5, 6, 7. Tho' mine went by a conveyance directly to Bordeaux, & may therefore probably get safe to you, yet I think it proper, lest it should miscarry, to repeat to you the following paragraph from it. * * *

I am perfectly sensible that your situation must, ere this reaches you, have been delicate & difficult: and tho' the occasion is probably over, and your part taken of necessity, so that instructions now would be too late, yet I think it just to express our sentiments on the subject as a sanction of what you have probably done. Whenever the scene became personally dangerous to you, it was proper you should leave it, as well from personal as public motives. But what degree of danger should be awaited, to what distance or place you should retire, are circumstances which must rest with your own discretion, it being impossible to prescribe them from hence.—With what kind of government you may do business, is another question. It accords with our principles to acknolege any government to be rightful which is formed by the will of the nation substantially declared. The late government was of this kind, & was accordingly acknoleged by all the branches of ours. So any alteration of it which shall be made by the will of the nation substantially declared, will doubtless be acknoleged in like manner. With such

a government *every kind* of business may be done. But there are *some matters* which I conceive might be transacted with a government *de facto:* such for instance as the reforming the unfriendly restrictions on our commerce & navigation. Such cases you will readily distinguish as they occur. With respect to this particular reformation of their regulations we cannot be too pressing for it's attainment, as every days continuance gives it additional firmness & endangers it's taking root in their habits & constitution: and indeed I think they should be told, as soon as they are in a condition to act, that if they do not revoke the late innovations, we must lay additional & equivalent burthens on *French ships*, by name.—Your conduct in the case of M. de Bonne-Carrere is approved intirely. We think it of great consequence to the friendship of the two nations to have a minister here in whose dispositions we have confidence.—Congress assembled the day before yesterday. I inclose you a paper containing the President's speech whereby you will see the chief objects of the present session. Your difficulties as to the settlements of our accounts with France, & as to the payment of the foreign officers will have been removed by the letter of the Secretary of the Treasury, of which, for fear it should have miscarried, I now inclose you a duplicate. Should a conveyance for the present letter offer to any port of France directly, your newspapers will accompany it. Otherwise I shall send it through Mr. Pinckney, & retain the newspapers as usual for a direct conveyance.

TO THOMAS PINCKNEY J. MSS.

PHILADELPHIA Nov. 8, 1792.

DEAR SIR,—Having at the moment I was induced to undertake my present office, determined to retire from it as soon as decency would permit, & very early after, fixing on the termination of our first federal period of 4. years as the proper epoch for retirement, I now contemplate the approach of that moment with the fondness of a sailor who has land in view. The object of this private letter is to desire that you will be so good as to direct your future public letters to the Secretary of State by that title, & not by name till you know who he will be, as otherwise all letters arriving after the 3rd of March should incur the expense, delay and risk of travelling 600. miles by post.—The prospect of resuming the direction of my farm induced me to trouble you with the commission for the threshing machine, which I shall be happy to receive, and shall take the most effectual methods of rendering public.

I may perhaps, with your permission, take the liberty of troubling you sometimes with a line from my retirement, and shall be ever happy to hear from you, & give every proof of the sincere esteem & respect with which I have the honor to be Dear Sir your most obedt Servt.

P. S.—We received information yesterday of the conclusion of peace with the Wabash & Illinois Indians. This forms a separation between the Northern & Southern war-tribes.

TO THE PRESIDENT OF THE UNITED STATES J. MSS.

Nov. 16, 1792.

Th: Jefferson has the honor to inform the President that the papers from Johanna Lucia Henriette Hendrickson, a Danish subject, state that she is entitled to inherit from her brother Daniel Wriesburg deceased two tracts of land in New Jersey & New York and she petitions Congress, & the states of New Jersey & New York to have justice done her, offering, if they will pay her the reasonable rents during her life and an indemnification for the detention hitherto, that she will cede to them the remainder after her death for the establishment of a charitable institution for the benefit of poor military persons, the plan of which she leaves to the President of the U. S. to settle.

Th: Jefferson is of opinion that the incompetence of the General government to legislate on the subject of inheritances is a reason the more against the President's becoming the channel of a petition to them: but that it might not be amiss that Th: J. should inclose to the Governors of New Jersey & N. York the petitions addressed to their states, as some advantages are offered to them of which they will take notice, or not, at their pleasure. If the President approves of this, & will return the petitions they shall be inclosed accordingly.

TO THOMAS MANN RANDOLPH J. MSS.

Philadelphia Nov. 16, 1792.

Dear Sir,—Congress have not yet entered into any important business. An attempt has been made

to give further extent to the influence of the Executive over the legislature, by permitting the heads of departments to attend the house and explain their measures *viva voce*. But it was negatived by a majority of 35 to 11 which gives us some hope of an increase of the republican vote. However no trying question enables us yet to judge, nor indeed is there reason to expect from this Congress many instances of conversion tho' some will probably have been effected by the expression of the public sentiment in the late election. For as far as we have heard the event has been generally in favor of republican & against the aristocratical candidates. In this state the election has been triumphantly carried by the republicans; their antagonists having got but 2 out of 11 members, and the vote of this state can generally turn the balance. Freneau's paper is getting into Massachusetts under the patronage of Hancock & Sam Adams, & Mr. Ames, the colossus of the monocrats & paper men, will either be left out or hard run. The people of that state are republican; but hitherto they have heard nothing but The hymns & lauds chaunted by Fenno.—My love to my dear Martha and am Dear Sir Yours affectionately.

TO THE PRESIDENT OF THE UNITED STATES

J. MSS.

November 18, 1792.

Th: Jefferson has the honor to inform the President that the papers from Mons^r^ Cointeraux of Paris contain some general ideas on his method of building

houses of mud, he adds that he has a method of making incombustible roofs and ceilings, that his process for building is auxiliary to agriculture, that France owes him 66,000 livres, for so much expended in experiments & models of his art, but that the city of Paris is unable to pay him 600. livres decreed to him as a premium, that he is 51. years old has a family of seven persons, and asks of Congress the expenses of their passage & a shop to work in.

Th: Jefferson saw M. Cointeraux at Paris, went often to examine some specimens of mud walls which he erected there, and which appeared to be of the same kind generally built in the neighborhood of Lyons, which have stood perhaps for a century. Instead of moulding bricks, the whole wall is moulded at once, & suffered to dry in the sun, when it becomes like unburnt brick. This is the most serious view of his papers. He proceeds further to propose to build all our villages incombustible that the enemy may not be able to burn them, to fortify them all with his kind of walls impenetrable to their cannon, to erect a like wall across our whole frontier to keep off the Indians, observing it will cost us nothing but the building, &c. &c. &c.

The paper is not in the form of a petition, tho' evidently intended for Congress, & making a proposition to them. It does not however merit a departure from the President's rule of not becoming the channel of petitions to that body, nor does it seem entitled to any particular answer.

ACT TO AMEND THE ACT INTITLED AN ACT MAKING PROVISION FOR REDEMPTION OF THE PUBLIC DEBT J. MSS.

[November, 1792.]

It being highly expedient that no time should be lost in redeeming those portions of the principal of the Public debt which may be annually redeemed, and more desirable, until other funds shall be provided, to apply to this object the surplus of duties described in the act making provision for the reduction of the Public debt, than to the purchase of any other part of the said Debt.

Be it enacted by the Senate & House of Repr of the U. S. of A. in Congs. assembled, that the sd surplus now in the treasury, or hereafter coming into the treasury shall be applied under the direction of the persons therein named to the redemption of those proportions of the public debt bearing a present interest of six per centum per annum which may be lawfully redeemed, for the year preceeding the sd payments; and the residue, if any, to the redemption of the proportion of the same debt which may be redeemed in the then succeeding year.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA Novr 20th, 1792.

SIR,—Your letter on the subject of further supplies to the colony of St. Domingo, has been duly received and considered. When the distress of that Colony first broke forth, we thought we could not better evidence our friendship to that, and to the mother

country also, than to step in to its relief, on your application, without waiting a formal authorization from the national Assembly. As the case was unforeseen, so it was unprovided for on their part, and we did what we doubted not they would have desired us to do, had there been time to make the application, and what we presumed they would sanction as soon as known to them. We have now been going on more than a twelve-month, in making advances for the relief of the Colony, without having as yet received any such sanction; for the Decree of 4. millions of Livres in aid of the Colony, besides the circuitous and informal manner by which we became acquainted with it, describes and applies to operations very different from those which have actually taken place. The wants of the Colony appear likely to continue, and their reliance on our supplies to become habitual. We feel every disposition to continue our efforts for administering to those wants; but that cautious attention to forms, which would have been unfriendly in the first moment, becomes a duty to ourselves; when the business assumes the appearance of long continuance, and respectful also to the National assembly itself, who have a right to prescribe the line of an interference so materially interesting to the Mother country and the Colony.

By the estimate you were pleased to deliver me, we perceive that there will be wanting to carry the Colony through the month of December, between 30 & 40,000 dollars, in addition to the sums before engaged to you. I am authorized to inform you that the sum of 40,000 Dollars shall be paid to your orders

at the Treasury of the United States, and to assure you that we feel no abatement in our dispositions to contribute these aids from time to time, as they shall be wanting for the necessary subsistence of the Colony: but the want of express approbation from the national legislature must ere long produce a presumption that they contemplate perhaps other modes of relieving the Colony, and dictate to us the propriety of doing only what they shall have regularly and previously sanctioned.

Their Decree before mentioned, contemplates purchases made *in the United States only*. In this they might probably have in view, as well to keep the business of providing supplies under a single direction as that these supplies should be bought where they can be had cheapest, and where the same sum will consequently effect the greatest measure of relief to the Colony. It is our wish, as undoubtedly it must be yours, that the monies we furnish, be applied strictly in the line they prescribe. We understand, however, that there are in the hands of our Citizens, some bills drawn by the administration of the Colony, for articles of subsistence *delivered there*. It seems just that such of them should be paid as were received before *bona fide* notice that that mode of supply was not bottomed on the funds furnished to you by the United States, and we recommend them to you accordingly.

REPORT ON NEUFVILLE J. MSS.

November 26, 1792.

The Secretary of State, to whom was referred by the House of Representatives, the petition of John De Neufville, with instructions to examine the same, and report thereupon his opinion to the House, at the present Session, has had the same under examination, together with the Letter accompanying it from William Lee, Esquire, to the Petitioner, bearing date Dec. 14th, 1791, and hath also examined the records of the Department of State, which might throw light on the allegations of the said petition: And he finds—

That William Lee, Esquire, was appointed by Congress in May 1777, a Commissioner for the United States to the Courts of Vienna and Berlin, with power to communicate and treat with those Courts on the subjects of friendship, peace, the safety of navigation and mutual commerce, and to do all such things as might conduce to those ends.

That the Petitioner, then a citizen of the United Netherlands, met with Mr. Lee in Germany, where, conversing on the subject of their two Countries, a Treaty between them was spoken of as desirable, and perhaps practicable: that the Petitioner, having afterwards consulted with persons of influence in his own Country, was engaged by them, on behalf of their country, to concert with Mr. Lee, or any other person, in the employment of the United States, a plan of a Treaty: that this was done at a subsequent meeting, and the Plan signed by Mr.

Lee, on our part, and by the Petitioner, on the other Part: but that this plan was not prosecuted to effect, Congress putting the business into other hands. Which several facts appear by the Records in the Department of State, some of the most material of which have been extracted, and are hereto annexed.

The Petitioner further sets forth—

That the persecution excited against him by the enemies of the United States, on account of his Agency on the Part of Holland, in preparing the plan of a Treaty, obliged him to convey all his estate to his Son, to leave his Country, and to part with his property in the British funds, by which last operation, he lost between four and five thousand pounds sterling:

That he advanced for the State of South Carolina, fifteen thousand pounds sterling in Military and other Stores; for which advance, being pressed by his creditors, he was obliged to sell his House in Amsterdam for £10,000 Sterling, which was worth £14,000, and to pass over to America.

That he lent to Mr. Laurens, during his captivity, £1,000 sterling, which sum, however, Mr. Laurens, repaid him immediately on his liberation.

That he shipped goods to S^{t} Eustatia, with a view to supply the Americans, of which £15.000 sterling's worth was captured by British ships:

And that, during a space of three Years, his House was a hospital asylum for Americans in general, by which he incurred an Expense of £10,000 sterling.

The establishment of these latter facts has not been required by the Secretary of State, because, if

established, they would not, in his opinion, have founded a right to indemnification from the United States.

The part the Petitioner bore in projecting a Treaty between Holland and the United States, was, as a citizen of Holland, on the behalf of that country, while the Counterpart was carried on for us by Mr. Lee, then employed on another mission. It follows that each party should defray the expense of its own Agent, and that the Losses in the British funds, stated as a consequence of this particular transaction, were to be indemnified by his own nation, if by either party.

The advance of £15,000 sterling in Stores to the State of South Carolina, was a matter of account with that State, as must also be the losses consequent on that, in the Sale of his House, if they be a subject of indemnification at all.

The loan of a thousand pounds to Mr. Laurens, one of the Ministers of the United States, is acknowledged to have been speedily repaid.

The shipments of goods to S^{t} Eustatia, with a view of disposing of them to the Americans, were in the line of his commerce, and the Losses sustained on them by capture, belong fairly to the account of Profit and Loss, which every merchant hazards, and endeavors to counterpoise, without supposing himself insured either by his own, or any foreign Government.

The hospitalities of the Petitioner in Amsterdam, stated at £10,000 sterling, of which such Americans participated as happened to be there, found a claim to their particular gratitude and attention, and to

the esteem attached to the exercise of private virtues: but, whilst we sincerely regret calamities, which no degree of personal worth can avert, we are forced to declare they are no legitimate object of taxation on our Citizens in general.

These several Articles, constituting the foundation of the petition, the Secretary of State reports it is his Opinion, that no part of it ought to be granted.

AMENDMENTS TO FOREIGN INTERCOURSE BILL[1]

[Dec. 1, 1792.]

To the bill for continuing the act of July 1. 1790. c. 22, "providing the means of intercourse between the U. S. and foreign nations" it is proposed to add the following clause:

And be it further enacted that where monies shall have issued, or shall issue, from the treasury, for the purpose of *intercourse* or *treaty* with foreign nations, under the authority of the [2] said act, not the present, or [3] any preceding act, the President shall be authorized to refer the settlement and delivery of vouchers, for all such parts thereof as in his

[1] See *Annals*, III., 740, 1411. A copy of this was enclosed to the President, in the following letter:

"Sat. Dec. 1, 92.

"Th. Jefferson has the honor to submit to the President the inclosed draught of a clause which he has thought of proposing to the committee to whom the President's letter with the accounts of the Department of State are referred. He will have the honor of waiting on the President at one o'clock, as well to explain any parts of it as to take his pleasure on the whole matter."

[2] 1790, July 1. c. 22. *T. J.*

[3] to wit 1791, Mar. 2. c. 16. 1792, May 2. c. 126. *T. J.*

judgment may be made public to the Auditor of the U. S. and for all other parts, to such person as he shall appoint, prescribing for their government, in every case, such rules as the nature of the case shall in his opinion require.[1]

OPINION ON FUGITIVE SLAVES J. MSS.

December 3, 1792.

Opinion relative to a case of recapture, by citizens of the United States, of slaves escaped into Florida, and of an American enticing French slaves from St. Domingo.

Complaint has been made by the Representatives of Spain that certain individuals of Georgia entered the State of Florida, and without any application to the Government, seized and carried into Georgia, certain persons, whom they claim to be their slaves. This aggression was thought the more of, as there exists a convention between that government and the United States against receiving fugitive slaves.

The minister of France has complained that the master of an American vessel, while lying within a harbor of St. Domingo, having enticed some negroes on board his vessel, under pretext of employment, brought them off, and sold them in Georgia as slaves.

1. Has the general government cognizance of these offences? 2. If it has, is any law already provided for trying and punishing them?

[1] The acts of 1790 & 1792 are for the purpose of *intercourse* with foreign nations; that of 1791. is for a TREATY with Morocco. *T. J.*

1. The Constitution says "Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts &c., provide for the common defence and *general welfare* of the United States." I do not consider this clause as reaching the point. I suppose its meaning to be, that Congress may collect taxes for the purpose of providing for the *general welfare*, in those cases wherein the Constitution empowers them to act for the general welfare. To suppose that it was meant to give them a distinct substantive power, to do *any act* which might tend to the *general welfare*, is to render all the enumerations useless, and to make their powers unlimited. We must seek the power therefore in some other clause of the Constitution. It says further, that Congress shall have power to "define and punish piracies and felonies committed on the high seas, and offences against the law of nations." These offences were not committed on the high seas, and consequently not within that branch of the clause. Are they against the law of nations, taken as it may be in its whole extent, as founded, 1st, by nature; 2d, usage; 3d, convention. So much may be said in the affirmative, that the legislators ought to send the case before the judiciary for discussion; and the rather, when it is considered that unless the offenders can be punished under this clause, there is no other which goes directly to their case, and consequently our peace with foreign nations will be constantly at the discretion of individuals.

2. Have the legislators sent this question before the Courts by any law already provided? The act

of 1789, chapter 20, section 9, says the district courts shall have cognizance concurrent with the courts of the several States, or the circuit courts, of all causes, where an *alien sues for a tort only*, in violation of the law of nations; but what if there be no alien whose interest is such as to support an action for the tort? —which is precisely the case of the aggression on Florida. If the act in describing the jurisdiction of the Courts, had given them cognizance of proceedings by way of indictment or information against offenders under the law of nations, for the public wrong, and on the public behalf, as well as to an individual for the special tort, it would have been the thing desired.

The same act, section 13, says, the "Supreme Court shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise consistently, with the law of nations."—Still this is not the case, no ambassador, &c., being concerned here. I find nothing else in the law applicable to this question, and therefore presume the case is still to be provided for, and that this may be done by enlarging the jurisdiction of the courts, so that they may sustain indictments and informations on the public behalf, for offences against the law of nations.[1]

[1] To this Jefferson has added a note at a later period:

"On further examination it does appear that the 11th section of the judiciary act above cited gives to the circuit courts exclusively, cognizance of all crimes and offences cognizable under the authority of the United States, and not otherwise provided for. This removes the difficulty, however, but one step further;—for questions then arise,

TO THOMAS PINCKNEY J. MSS.

PHILADELPHIA, December 3. 1792.

DEAR SIR,— * * * I do not write you a public letter by the packet because there is really no subject for it. The elections for Congress have produced a decided majority in favor of the republican interest. They complain, you know, that the influence and patronage of the Executive is to become so great as to govern the Legislature. They endeavored a few days ago to take away one means of influence by condemning references to the heads of department. They failed by a majority of five votes. They were more successful in their endeavor to prevent the introduction of a new means of influence, that of admitting the heads of department to deliberate occasionally in the House in explanation of their measures. The proposition for their admission was rejected by a pretty general vote. I think we may consider the tide of this government as now at the fullest, and that it will, from the commencement of the next session of Congress, retire and subside into the true principles of the Constitution. An alarm has been endeavored to be sounded as if the republican interest was indisposed to the payment of the public debt. Besides the general object of the calumny, it was meant to answer the special one of electioneering. Its falsehood was so notorious that it produced little effect. They endeavored with as little success to conjure up the ghost of antifederalism,

1st. What is the peculiar character of the offence in question; to wit, treason, felony, misdemeanor, or trespass? 2d. What is its specific punishment—capital or what? 3d. Whence is the venue to come?''

and to have it believed that this and republicanism were the same, and that both were Jacobinism. But those who felt themselves republicans and federalists too, were little moved by this artifice; so that the result of the election has been promising. The occasion of electing a Vice-President has been seized as a proper one for expressing the public sense of the doctrines of the monocrats. There will be a strong vote against Mr. Adams, but the strength of his personal worth and his services will, I think, prevail over the demerit of his political creed.

DRAFT OF MESSAGE ON SOUTHERN INDIANS [1]

[Dec. 7, 1792]

GENTLEMEN OF THE SENATE & H. OF REPRESENTATIVES,—I now lay before you, for your further information, some additional advices lately received, on the subject of the hostilities committed by the Chuckamogga Towns, or under their name and guidance.

The importance of preventing this hostile spirit from spreading to other tribes, or other parts of the same tribe of Indians, a considerable military force actually embodied in their neighborhood, and the advanced state of the season, are circumstances which render it interesting that this subject should obtain your earliest attention.

The Question of War, being placed by the Consti-

[1] This is not dated, but was probably written in December, 1792. The message sent was entirely different. See *Journal of the Senate*, I., 462.

tution with the legislature alone, respect to that made it my duty to restrain the operations of our militia to those merely defensive: & considerations involving the public satisfaction, & peculiarly my own, require that the decision of that Question, whichever way it be, should be pronounced definitively by the legislature themselves.

EXTEMPORE THOUGHTS AND DOUBTS ON VERY SUPERFICIALLY RUNNING OVER THE BANKRUPT BILL [1]

[December 1792.]

The British statute excepts expressly *farmers*, *graziers*, *drovers*, as such tho' they buy to sell again. This bill has no such exception.

The British adjudications exempt the buyers & sellers of bank stock, government papers, &c. What feelings guided the draughtsman in adhering to his original in this case & departing from it in the other?

The British courts adjudge that any artists may be bankrupts if the materials of their art are bought, such as shoemakers, blacksmiths, carpenters, &c. Will the body of our artists desire to be brought within the vortex of this law? It will follow as a consequence that the master who has an artist of this kind in his family whether hired, indentured, or a slave, to serve the purposes of his farm or family, but who may at leisure time do something for his neighbors also, may be a bankrupt.

[1] This is undated, but is apparently Jefferson's comment on the bankrupt bill introduced in the House of Representatives by W. L. Smith as chairman of a committee, Dec. 10. 1792.

The British law makes a departure from the *realm.* i.e. out of the mediation of British law, an act of bkrptcy. This bill makes a departure from the *State wherein he resides* (tho' into a neighboring one where the laws of the U. S. run equally,) an act of bankruptcy.

The Commnrs may enter houses, break open doors, chests, &c. Are we really ripe for this? is that spirit of independence & sovereignty which a man feels in his own house and which Englishmen felt when they denominated their houses their castles, to be absolutely subdued & is it expedient that it should be subdued?

The lands of the bankrupt are to be taken sold & is not this a predominant question between the general & State legislatures?

Is Commerce so much the basis of the existence of the U. S. as to call for a bankrupt law? on the contrary are we not almost agricultural? Should not all laws be made with a view essentially to the poor husbandman? When laws are wanting for particular descriptions of other callings, should not the husbandman be carefully excused from their operation, and preserved under that of the general system only, which general system is fitted to the condition of the husbandman?

TO DR. GEORGE GILMER J. MSS.

PHILADELPHIA Dec. 15, 1792.

DEAR DOCTOR,—I received only two days ago your favor of Oct. 9, by Mr. Everett. He is now under

the small-pox. I am rejoiced with the account he gives me of the invigoration of your system, and am anxious for your persevering in any course of regimen which may long preserve you to us.—We have just received the glorious news of the Prussian army being obliged to retreat, and hope it will be followed by some proper catastrophe on them. This news has given wry faces to our monocrats here, but sincere joy to the great body of citizens. It arrived only in the afternoon of yesterday, & the bells were rung, & some illuminations took place in the evening.—A proposition has been made to Congress to begin sinking the public debt by a tax on pleasure horses; that is to say, on all horses not employed for the draught or farm. It is said there is not a horse of that description eastward of New York. And as to call this a *direct tax* would oblige them to proportion it among the states according to the census, they chuse to class it among the *indirect taxes*.—We have a glimmering hope of peace from the Northern Indians, but from those of the South there is danger of war. Wheat is at a dollar and a fifth here. Do not sell yours till the market begins to fall. You may lose a penny or two in the bushel then, but might lose a shilling or two now. Present me affectionately to Mrs. Gilmer. Your's sincerely.

TO JOHN FRANCIS MERCER J. MSS.

PHILADELPHIA Dec. 19, 1792.

DEAR SIR,—I received yesterday your favor of the 13th. I had been waiting two or three days in ex-

pectation of vessels said to be in the river & by which we hoped more particular accounts of the late affairs in France. It has turned out that there were no such vessels arriving as had been pretended. However I think we may safely rely that the D of Brunswick has retreated, and it is certainly possible enough that between famine, disease, and a country abounding with defiles, he may suffer some considerable catastrophe. The Monocrats here still affect to disbelieve all this, while the republicans are rejoicing and taking to themselves the name of Jacobins which two months ago was affixed on them by way of stigma. The votes for Vice President, as far as hitherto known stand thus:

	Adams.	Clinton.
N Hampshire	6	
Massachusetts	16	
Rhode island	4	
Connecticut	9	
New York		12
Pennsylvania	14	1
Delaware	3	
Maryland	8	
Virginia		21
	60	34

Bankrupt bill is brought on, with some very threatening features to landed & farming men, who are in danger of being drawn into it's vortex. It assumes the right of seizing & selling lands, and so cuts the knotty question of the Constitution whether

the general government may direct the transmission of land by descent or otherwise.—The post office is not within my department, but that of the treasury. —I note duly what you say of Mr. Skinner, but I don't believe any bill on Weights & measures will be passed. Adieu. Dr Sir, Yours affectionately.

TO THOMAS MANN RANDOLPH J. MSS.

PHILADELPHIA Dec. 21, 1792.

DEAR SIR,—We have as yet no direct information from France of the retreat of the D. of Brunswick. However so many circumstances are stated in the English papers as to leave no doubt of the fact.— Wheat is fallen from 125 to 112 cents. This has been effected by the bank here, which refused to merchants purchasing wheat here the aids it has been in the habit of furnishing. Merchants no longer getting their bills discounted at the bank, have been obliged to draw bills of exchange & also to sell their stock to make their purchases of wheat, the consequence has been that exchange stock & wheat have fallen. However the demand will continue to be great.—Will you be so good as to ask of Smith George a list of the tools of which he has need to enable him to do good work in every way in which he can work. I shall be glad to get them while here.—You have heard of the proposed tax on horses. It is uncertain what will be it's fate. Besides it's partiality, it is infinitely objectionable as foisting in a *direct* tax under the name of an indirect

one.—A bankrupt bill is brought in in such a form as to render almost all the land holders South of this state liable to be declared bankrupts. It assumes a right of seizing & selling lands. Hitherto we had imagined the general government could not meddle with the title to lands.—My love to my dear Martha & am Dear Sir, Your's affectionately.

TO THE U. S. MINISTER TO FRANCE J. MSS.
(GOUVERNEUR MORRIS)

PHILADELPHIA Dec. 30. 1792.

DEAR SIR—My last to you was of Mar. 7. since which I have received your Nos. 8. and 9. I am apprehensive that your situation must have been difficult during the transition from the late form of government to the re-establishment of some other legitimate authority, and that you may have been at a loss to determine with whom business might be done. Nevertheless when principles are well understood their application is less embarrassing. We surely cannot deny to any nation that right whereon our own government is founded, that every one may govern itself under whatever forms it pleases, and change these forms at it's own will, and that it may transact it's business with foreign nations through whatever organ it thinks proper, whether King, convention, assembly, committee, President, or whatever else it may chuse. The will of the nation is the only thing essential to be regarded. On the dissolution of the late constitution in France, by removing

so integral a part of it as the King, the National Assembly, to whom a part only of the public authority had been delegated, sensible of the incompetence of their powers to transact the affairs of the nation legitimately, incited their fellow citizens to appoint a national convention during this defective state of the national authority. Duty to our constituents required that we should suspend paiment of the monies yet unpaid of our debt to that country, because there was no person or persons substantially authorized by the nation of France to receive the monies and give us a good acquittal. On this ground my last letter desired you to suspend paiments till further orders, with an assurance, if necessary, that the suspension should not be continued a moment longer than should be necessary for us to see the re-establishment of some person or body of persons with authority to receive and give us a good acquittal. Since that we learn that a Convention is assembled, invested with full powers by the nation to transact it's affairs. Tho' we know that from the public papers only, instead of waiting for a formal annunciation of it, we hasten to act upon it by authorizing you, if the fact be true, to consider the suspension of paiment, directed in my last letter, as now taken off, and to proceed as if it had never been imposed; considering the Convention, or the government they shall have established as the lawful representatives of the Nation and authorized to act for them. Neither the honor nor inclination of our country would justify our withholding our paiment under a scrupulous attention to forms. On the contrary

they lent us that money when we were under their circumstances, and it seems providential that we can not only repay them the same sum, but under the same circumstances. Indeed, we wish to omit no opportunity of convincing them how cordially we desire the closest union with them: Mutual good offices, mutual affection and similar principles of government seem to have destined the two people for the most intimate communion, and even for a complete exchange of citizenship among the individuals composing them.

During the fluctuating state of the Assignats of France, I must ask the favor of you to inform me in every letter of the rate of exchange between them & coin, this being necessary for the regulation of our custom houses. We are continuing our supplies to the island of St. Domingo at the request of the Minister of France here. We would wish however to receive a more formal sanction from the government of France than has yet been given. Indeed, we know of none but a vote of the late National Assembly for 4 millions of livres of our debt, sent to the government of St. Domingo, communicated by them to the Minister here, & by him to us. And this was in terms not properly applicable to the form of our advances. We wish therefore for a full sanction of the past & a complete expression of the desires of their government as to future supplies to their colonies. Besides what we have furnished publicly, individual merchants of the U. S. have carried considerable supplies to the island of St. Domingo, which have been sometimes purchased, sometimes taken by force, and

bills given by the administration of the colony on the minister here, which have been protested for want of funds. We have no doubt that justice will be done to these [1]

TO THE PRESIDENT OF THE UNITED STATES

D. S. MSS.

PHILADELPHIA Jan. 1, 1793.

SIR,—I have duly considered the translation of the letter of Dec. 27, from M. de la Forest, stating that the French Consuls here have a right to receive their salaries at Paris, that under the present circumstances they cannot dispose of their bills, and desiring that our government will take them as a remittance in part of the monies we have to pay to France. No doubt he proposes to let us have them on such terms as may ensure us against loss either from the course of exchange of cash for cash at Philadelphia, Amsterdam & Paris, or from the difference between cash and assignats at Paris, in which latter form they will probably be paid. I do not observe any objection from the treasury that this channel of remittance would be out of their ordinary line and inadmissible on that account.—Taking it therefore on the ground merely of an advance unauthorized by the French government, I think the bills may be taken. We have every reason to believe the money is due to them, and none to doubt it will be paid, every creditor being authorized to draw on his debtor. They will be paid indeed in assignats, at the nominal value only, but it is pre-

[1] The completion of this letter is lost.

viously understood that these will procure cash on the spot of the real value we shall have paid for them. The risk, if any, is certainly very small, and such as it would be expedient in us to encounter in order to oblige these gentlemen. I think it of real value to produce favorable dispositions in the agents of foreign nations here. Cordiality among nations depends very much on the representations of their agents mutually, and cordiality once established, is of immense value, even counted in money, from the favors it produces in commerce, and the good understanding it preserves in matters merely political.

TO WILLIAM SHORT [1]

PHILADELPHIA Jan 3. 1793.

DEAR SIR,—My last private letter to you was of Oct. 16. since which I have received your No. 103, 107, 108, 109, 110, 112, 113, & 114 and yesterday your private one of Sept 15, came to hand. The tone of your letters had for some time given me pain, on account of the extreme warmth with which they censured the proceedings of the Jacobins of France. I considered that sect as the same with the Republican patriots, & the Feuillants as the Monarchical patriots, well known in the early part of the revolution, & but little distant in their views, both having in object the establishment of a free constitution, & differing only on the question whether their chief Executive should be hereditary or not. The Jacobins (as since called)

[1] Parts in italic are in cipher numbers in original.

yielded to the Feuillants & tried the experiment of retaining their hereditary Executive. The experiment failed completely, and would have brought on the reestablishment of despotism had it been pursued. The Jacobins saw this, and that the expunging that officer was of absolute necessity. And the Nation was with them in opinion, for however they might have been formerly for the constitution framed by the first assembly, they were come over from their hope in it, and were now generally Jacobins. In the struggle which was necessary, many guilty persons fell without the forms of trial, and with them some innocent. These I deplore as much as any body, & shall deplore some of them to the day of my death. But I deplore them as I should have done had they fallen in battle. It was necessary to use the arm of the people, a machine not quite so blind as balls and bombs, but blind to a certain degree. A few of their cordial friends met at their hands the fate of enemies. But time and truth will rescue & embalm their memories, while their posterity will be enjoying that very liberty for which they would never have hesitated to offer up their lives. The liberty of the whole earth was depending on the issue of the contest, and was ever such a prize won with so little innocent blood? My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed, I would have seen half the earth desolated. Were there but an Adam & an Eve left in every country, & left free, it would be better than as it now is. I have expressed to you my sentiments, because they are really those of 99. in an hundred of

our citizens. The universal feasts, and rejoicings which have lately been had on account of the successes of the French shewed the genuine effusions of their hearts. You have been wounded by the sufferings of your friends, and have by this circumstance been hurried into a temper of mind which would be extremely disrelished if known to your countrymen. The *reserve of the President of the United States* had never permitted me to discover the light in which he viewed it, and as I was more anxious that you should satisfy him than me, I had still avoided explanations with you on the subject. But your 113. induced him to break silence and to notice the extreme acrimony of your expressions. He added that he had been informed the sentiments you expressed *in your conversations* were equally offensive to our allies, & that you should consider yourself as the representative of your country and that what you say might be imputed to your constituents. He desired me therefore to write to you on this subject. He added that he considered *France as the sheet anchor of this country and its friendship as a first object.* There are in the U. S. some characters of opposite principles; some of them are high in office, others possessing great wealth, and all of them hostile to France and fondly looking to England as the staff of their hope. These I named to you on a former occasion. Their prospects have certainly not brightened. Excepting them, this country is entirely republican, friends to the constitution, anxious to preserve it and to have it administered according to it's own republican principles. The little party above mentioned have

espoused it only as a stepping stone to monarchy, and have endeavored to approximate it to that in it's administration in order to render it's final transition more easy. The successes of republicanism in France have given the coup de grace to their prospects, and I hope to their projects.—I have developed to you faithfully the sentiments of your country, that you may govern yourself accordingly. I know your republicanism to be pure, and that it is no decay of that which has embittered you against it's votaries in France, but too great a sensibility at the partial evil [with] which it's object has been accomplished there. I have written to you in the stile to which I have been always accustomed with you, and which perhaps it is time I should lay aside. But while old men are sensible enough of their own advance in years, they do not sufficiently recollect it in those whom they have seen young. In writing too the last private letter which will probably be written under present circumstances, in contemplating that your correspondence will shortly be turned over to I know not whom, but certainly to some one not in the habit of considering your interests with the same fostering anxieties I do, I have presented things without reserve, satisfied you will ascribe what I have said to it's true motive, use it for your own best interest, and in that fulfil completely what I had in view.

With respect to the subject of your letter of Sep. 15. you will be sensible that many considerations would prevent my undertaking the reformation of a system with which I am so soon to take leave. It is

but common decency to leave to my successor the moulding of his own business.—Not knowing how otherwise to convey this letter to you with certainty, I shall appeal to the friendship and honour of the Spanish commissioners here, to give it the protection of their cover, as a letter of private nature altogether. We have no remarkable event here lately, but the death of Dr. Lee; nor have I anything new to communicate to you of your friends or affairs. I am with unalterable affection & wishes for your prosperity, my dear Sir, your sincere friend and servant.

P. S. Jan. 15, Your N$^{os.}$ 116. 117. and Private of Nov. 2. are received.—Congress have before them a statement of the 419. 274. 1149'. 426. 1729. It appears none were made from 42. 334. 362. 199. This long previous suspension and 406. 578. the day before the 620. 362. 115. 1467. 314. 167. 1278'. 319. 111. 1450. 796. 1490. 1042. 963. 307. 876.' him & leaves it 319. 1184. 758. 694. 1369. 1165. 527. 1480. 1340. had anything to do with it, and 394. 307. 876. 1300. 668. 758. 1412. 1165. 527. 1184. 1407. 977. 341'. 712. 1185. 865. 168. 224. 314. 336. 1322. 1683. 485. 578. 1077. 551. 426. 689. 986. 1369. 426. 202. 224. 778. 1460. 216. And I will have it so used for your justification as to clear you with all and injure you with *none*.

TO THOMAS MANN RANDOLPH J. MSS.

PHILADELPHIA Jan. 7. 1793.

DEAR SIR,—Our news from France continues to be good & to promise a continuance. The event of the

revolution there is now little doubted of, even by its enemies. The sensation it has produced here, and the indications of them in the public papers, have shown that the form our own government was to take depended much more on the events of France than any body had before imagined. The tide which, after our former relaxed government, took a violent course towards the opposite extreme, and seemed ready to hang every thing round with the tassels & baubles of monarchy, is now getting back as we hope to a just mean, a government of laws addressed to the reason of the people, and not to their weaknesses. The daily papers show it more than those you receive.—An attempt in the house of representatives to stop the recruiting service has been rejected. Indeed, the conferences for peace, agreed to by the Indians, do not promise much, as we have reason to believe they will insist on taking back lands purchased at former treaties.—Maria is well. We hope all are so at Monticello. My best love to my dear Martha and am most affectionately Dear Sir yours &c.

TO JAMES MONROE J. MSS.

Jan. 14, 1793.

I am a stranger to the instructions given to Mr. Short on the subject of money the correspondence thereon having been divided [?] between the Sec^{y} of the Treasury & him, without my privacy. Neither do I know whether any authority was given or not to G. Morris on that subject. The payment of the

9th. of August was made in consequence of a letter from G. Morris as I have reason to believe. Whether that letter could be an order or not I am uninformed, but it probably was either authoritative or of decisive influence.

INSTRUCTIONS TO ANDRÉ MICHAUX FOR EXPLORING THE WESTERN BOUNDARY [1]

[January, 1793.]

Sundry persons having subscribed certain sums of money for your encouragement to explore the country along the Missouri, and thence westwardly to the Pacific ocean, having submitted the plan of the enterprise to the directors of the American Philosophical society, and the society having accepted of the trust, they proceeded to give you the following instructions:

They observe to you that the chief objects of your journey are to find the shortest and most convenient route of communication between the United States and the Pacific ocean, within the temperate latitudes, and to learn such particulars as can be obtained of the country through which it passes, its productions, inhabitants, and other interesting circumstances. As a channel of communication between these States and the Pacific ocean, the Missouri, so far as it extends, presents itself under circumstances of unquestioned preference. It has, therefore, been declared as a fundamental object of the subscription

[1] The embryo of an idea later realized in the expedition of Lewis and Clark. See Vol. I., 280, and the sketch of Lewis, *post.*

(not to be dispensed with) that this river shall be considered and explored as a part of the communication sought for. To the neighborhood of this river, therefore, that is to say, to the town of Kaskaskia, the society will procure you a conveyance in company with the Indians of that town now in Philadelphia.

From thence you will cross the Mississippi and pass by land to the nearest part of the Missouri above the Spanish settlements, that you may avoid the risk of being stopped.

You will then pursue such of the largest streams of that river as shall lead by the shortest way and the lowest latitudes to the Pacific ocean. When, pursuing those streams, you shall find yourself at the point from whence you may get by the shortest and most convenient route to some principal river of the Pacific ocean, you are to proceed to such river and pursue its course to the ocean. It would seem by the latest maps as if a river called Oregon, interlocked with the Missouri for a considerable distance, and entered the Pacific ocean not far southward of Nootka Sound. But the society are aware that these maps are not to be trusted so far as to be the ground of any positive instruction to you. They therefore only mention the fact, leaving to yourself to verify it, or to follow such other as you shall find to be the real truth.

You will in the course of your journey, take notice of the country you pass through, its general face, soil, rivers, mountains, its productions—animal, vegetable, and mineral—so far as they may be new

to us, and may also be useful or very curious; the latitudes of places or material for calculating it by such simple methods as your situation may admit you to practice, the names, members, and dwellings of the inhabitants, and such particulars as you can learn of their history, connection with each other, languages, manners, state of society, and of the arts and commerce among them.

Under the head of animal history, that of the mammoth is particularly recommended to your inquiries, as it is also to learn whether the Lama or Paca of Peru, is found in those parts of this continent, or how far north they come.

The method of preserving your observations is left to yourself, according to the means which shall be in your power. It is only suggested that the noting them on the skin might be best for such as may be the most important, and that further details may be committed to the bark of the paper-birch, a substance which may not excite suspicions among the Indians, and little liable to injury from wet or other common accidents. By the means of the same substance you may perhaps find opportunities, from time to time of communicating to the society information of your progress, and of the particulars you shall have noted.

When you shall have reached the Pacific ocean, if you find yourself within convenient distance of any settlement of Europeans, go to them, commit to writing a narrative of your journey and observations, and take the best measure you can for conveying it thence to the society by sea.

Return by the same, or some other route, as you shall think likely to fulfil with most satisfaction and certainty the objects of your mission, furnishing yourself with the best proofs the nature of the case will admit of the reality and extent of your progress, Whether this shall be by certificates from Europeans settled on the western coast of America, or by what other means, must depend on circumstances. Ignorance of the country through which you are to pass, and confidence in your judgment, zeal, and discretion, prevent the society from attempting more minute instructions, and even from exacting rigorous observance of those already given, except, indeed, what is the first of all objects, that you seek for and pursue that route which shall form the shortest and most convenient communication between the higher parts of the Missouri and the Pacific ocean.

It is strongly recommended to you to expose yourself in no case to unnecessary dangers, whether such as might affect your health or your personal safety, and to consider this not merely as your personal concern, but as the injunction of science in general, which expects its enlargement from your inquiries, and of the inhabitants of the United States in particular, to whom your report will open new fields and subjects of commerce, intercourse, and observation.

If you reach the Pacific ocean and return, the society assign to you all the benefits of the subscription before mentioned. If you reach the waters only that run into that ocean, the society reserve to themselves the apportionment of the reward according to the conditions expressed in the subscription.

If you do not reach even those waters they refuse all reward, and reclaim the money you may have received here under the subscription.

They will expect you to return to the city of Philadelphia to give in to them a full narrative of your journey and observations, and to answer the inquiries they shall make of you, still reserving to yourself the benefit arising from the publication of such parts of them as are in the said subscription reserved to you.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA January 14th. 1793.

SIR,—I have laid before the President of the United States your Letter of the 7th instant, desiring a supply in money, on account of our debt to France, for the purpose of paying certain Bills drawn by the Administration of St. Domingo, and for procuring necessaries for that colony, which supply you wish should, with those preceding, make up the amount of four millions of Livres. You are sensible of the difficulty of the situation in which this places our Government, between duty to it's own Constituents, on the one side, which would require that large payments of their money should be made on such sanction only as will establish them beyond the reach of all question, and, on the other side, their sincere friendship to the Nation of France, heightened in the case of the Colony by motives of neighborhood and commerce. But having, in a former letter ex-

pressed to you our desire that an authentic and direct sanction may be obtained from the Government of France, for what we have done, and what we may here after be desired to do, I proceed to inform you that motives of friendship prevailing over those of rigorous caution, the President of the United States has acceded to your present desire. Arrangements will consequently be taken at the Treasury for furnishing money for the calls and at the epoch stated in your letter of the 7th, and also for those expressed in your other letter of the relating to the Consuls of France.

I have however, Sir, to ask the favor of you to take arrangements with the Administration of St. Domingo, so as that future supplies from us, should they be necessary, may be negotiated here, before they are counted on and drawn for there. Bills on the French Agents here to be paid by us, amount to Bills on us: and it is absolutely necessary that we be not subject to calls, which have not been before calculated and provided for.

In enabling you to get rid of the present embarrassment, you are more at ease to take measures against any similar one in future from the same source.

TO FRANCIS EPPES J. MSS.

PHILADELPHIA Jan. 16.

DEAR SIR,—Your favor of the 2d inst. is duly received, and in answer to your enquiries about the prospect of foreign demand for wheat I answer that

it will be undoubtedly great. Something like a famine may be apprehended thro' the greater part of France, Spain is buying largely, and I am assured from authority that England will want a good deal. Her ports were opened to the reception of it for home consumption in November, which was very early indeed for the price to be already up to the importation prices. The demands in the West Indies are always considerable: but we now furnish the whole consumption to the French West Indies, which used to be chiefly supplied from France. In addition to this the military they have sent over require 40.000 dollars worth of provisions a month, which is regularly purchased for them here. So that the price cannot but be high. I think the best rule is, never to sell on a rising market. Wait till it *begins* to fall. Then indeed one will lose a penny or two, but with a rising market you never know what you are to lose. My love to Mrs. Eppes & the family. Each is well. Adieu.

TO MRS. MARTHA JEFFERSON RANDOLPH J. MSS.

PHILADELPHIA. Jan. 26, 1793.

MY DEAR MARTHA,—I received two days ago yours of the 16th You were never more mistaken than in supposing you were too long on the prattle &c of little Anne. I read it with quite as much pleasure as you write it. I sincerely wish I could hear of her perfect re-establishment.

I have for some time past been under an agitation of mind which I scarcely ever experienced before,

produced by a check on my purpose of returning home at the close of this session of Congress. My operations at Monticello had been all made to bear upon that point of time, my mind was fixed on it with a fondness which was extreme, the purpose firmly declared to the President, when I became assailed from all quarters with a variety of objections. Among these it was urged that my return just when I had been attacked in the public papers, would injure me in the eyes of the public, who would suppose I either withdrew from investigation, or because I had not tone of mind sufficient to meet slander. The only reward I ever wished on my retirement was to carry with me nothing like a disapprobation of the public. These representations have, for some weeks passed shaken a determination which I had thought the whole world could not have shaken. I have not yet finally made up my mind on the subject, nor changed my declaration to the President. But having perfect reliance in the disinterested friendship of some of those who have counselled & urged it strongly; believing that they can see and judge better a question between the public & myself than I can, I feel a possibility that I may be detained here into the summer. A few days will decide. In the meantime I have permitted my house to be rented after the middle of March, have sold such of my furniture as would not suit Monticello, and am packing up the rest and storing it ready to be shipped off to Richmond as soon as the season of good sea-weather comes on. A circumstance which weighs on me next to the weightest is the trouble which I foresee I shall be constrained

to ask Mr. Randolph to undertake. Having taken from other pursuits a number of hands to execute several purposes which I had in view this year, I cannot abandon those purposes and lose their labour altogether. I must therefore select the most important & least troublesome of them, the execution of my canal, and (without embarrassing him with any details which Clarkson and George are equal to) get him to tell them always what is to be done & how, & to attend to levelling the bottom, but on this I shall write him particularly if I defer my departure. I have not received the letter which Mr. Carr wrote to me from Richmond nor any other from him since I left Monticello. My best affections to him, Mr. Randolph & your fireside and am with sincere love my dear Martha yours.

MAL-ADMINISTRATION OF TREASURY J. MSS.

[Feb. 7, 1793.]

The most prominent suspicion excited by the Report of the S. of the T. of Jan. 3, 1793. is that the funds raised in Europe & which ought to have been applied to the paiment of our debts there in order to stop interest, have been drawn over to this country & lodged in the bank, to extend the speculations and increase the profits of that institution.

To come at the truth of this it becomes necessary to arrange the articles of this Report into two accounts. viz

1. An account of the funds provided *in Europe*, for

which the Treasury is to be debited: while it is to be credited for the application of these funds to such disbursements as they were by law appropriated to. The balance remaining on hand there, must still belong to the same purposes.

2. An account of the funds provided *in America* for the objects which are entered in this report, or may be brought forward to support it; which are to be Debited to the Treasury, while it is Credited for the applications of them to the purposes to which they have been appropriated by law.

The two following Accounts [See pp. 218, 219] are raised on these principles.

There being certainly then a balance of 549,278.19 D. and probably much more in the bank, there must have been a balance of 39, 278.19 D. before the last draughts for 510,000 D. were made in it's favor. Why then were they made? But to put these matters out of question two further statements are requisite, viz.

1. The account of the U. S. with the bank, from which we may see whether the state of the account was such as to require this paiment.
2. A statement of the surplusses of revenue which actually arose, and might have been applied to the purchase of the publick debt. The amount of these surplusses are to be added to our balance against the bank.

Dr. The Treasury, for Receipts & Disbursements *in Europe*, in account with the U. S. of America. *Cr.*

(pa. 2.) To nett amount of monies borrowed in Amstdm & Antwerp. 18,678,000 florins (@ 99 F = 40 D)..... D 7,545,912

NOTE.—We have admitted that the whole 2,000,000 D subscribed to the bank might have been paid out of the funds in Europe. Whereas in truth their subscription being on the 1st Jan., 1792. there should have been paid on that day the first instalment only of 500,000 D. and before any other instalment became due, there was the loan of 2,000,000 D. from the bank, on the same day, which might have been applied, so as to spare the European fund. There would then have remained 1,500,000 D. more in Europe to pay off the French debt and stop its interest, instead of lying dead in the bank, but waive this, because it admits some cavil.

By disbursements for the purposes to which the loans were appropriated by law, viz.

(bank law, § 11.) To the bank for the subscription of the U. S.....			D. 2,000,000
	F	s	
(pa. 2) To France.....10,083,116–9			
(pa. 3.) For other foreign loans.....	1,783,189–2–8		
Commission, &c.	19,172		
Postage & advertising.....	613–8–8		
Interest to foreign officers...	105,000		
To Spain.....	680,000		
	12,621,091		= 5,098,920.76
Balance stated to be in hands of the Commissioners.	D 407,287–7–8	= 184,544	
Deficit not found in their hands.		282,447.24	446,991.24
			7,545,912

Dr. The Treasury for Receipts & Disbursements *in America* in Account with the U. S. of America *Cr.*

To deficit in the *European* fund as per contra.....	282,447 24	
To loan from the bank.....	2,000,000	
To Surplusses of revenues appropr[d] to Purchase of Public debt (suppose)....	967,821 65	3,250,268.89

(p. 5.) By Departm[t] of State for Barbary & foreign Transactions [Acts 90, July 1, c. 22, 92, May 8, c. 41].....	128,766.67	
By paid to France for St. Domingo.....	445,263.83	
By paid in purchase of Public debt [see Report of Comm[rs] of Nov. 17, '92, pa 4] ...	967,821.65	1,541,852.15
Balance remaining in bank ought to be 1,708,416.76 but if to avoid cavil, we admit the 191,316,90 D. rightly drawn from Europe into the hands of the bank to pay *certain foreign officers* in Europe as by contract, then we must credit that sum.....		191,316.90
The balance in bank will then be.....		1,517,099.84
		3,250,268.89
The only possible deduction which could be made from this balance further would be so much of the 967,821.65 D paid in purchase of the public debt as exceeds the Surpluses of Revenue applicable to that purchase. If there has been no surplus at all then from.....		1,517,099.84
We must deduct the whole.....		967,821.65
Which would leave a balance in the bank still of.....		549,278.19

GILES TREASURY RESOLUTIONS [1]

[February ? 1793]

JEFFERSON'S DRAFT

1. *Resolved*, That it is essential to the due administration of the Government of the United States, that laws making specific appropriations of money should be strictly observed by the Secretary of the Treasury thereof.

2. *Resolved*, That a violation of a law making appropriations of money is a violation of that section of the Constitution of the United States which requires that no money shall be drawn from the Treasury but in consequence of appropriations made by law.

3. *Resolved*, That the Secretary of the Treasury, in drawing to this country and lodging in the bank the funds raised in Europe, which ought to have been applied to the paiments of our debts there in order to stop interest, has violated the instructions of the President of the United States for the benefit of speculators and to increase the profits of that institution.

RESOLUTIONS AS MOVED

1. *Resolved*, That it is essential to the due administration of the Government of the United States, that laws making specific appropriations of money should be strictly observed by the administrator of the finances thereof.

2. *Resolved*, That a violation of a law making appropriations of money is a violation of that section of the Constitution of the United States which requires that no money shall be drawn from the Treasury but in consequence of appropriations made by law.

3. *Resolved*, That the Secretary of the Treasury has violated the law passed the 4th of August, 1790, making appropriations of certain moneys authorized to be borrowed by the same law, in the following particulars, viz: First, By applying a certain portion of the principal borrowed to the payment of interest falling due upon that principal, which was not authorized by that

[1] From the original courteously loaned me by Miss S. N. Randolph. See I., 261, and *Annals*, II., 999.

4. *Resolved*, That the Secretary of the Treasury has deviated from the instructions given by the President of the United States, in exceeding the authorities for making loans under the acts of the 4th and 12th of August, 1790.

5. *Resolved*, That the Secretary of the Treasury has omitted to discharge an essential duty of his office, in failing to give Congress official information in due time, of the moneys drawn by him from Europe into the United States; which drawing commenced December, 1790, and continued till January, 1793; and of the causes of making such drafts.

6. *Resolved*, That the Secretary of the Treasury has, without the instructions of the President of the United States, drawn more moneys borrowed in Holland into the United States than the President of the United States was authorized to draw, under the act of the 12th of August, or any other law. Secondly, By drawing part of the same moneys into the United States, without the instructions of the President of the United States.

4. *Resolved*, That the Secretary of the Treasury has deviated from the instructions given by the President of the United States, in exceeding the authorities for making loans under the acts of the 4th and 12th of August, 1790.

5. *Resolved*, That the Secretary of the Treasury has omitted to discharge an essential duty of his office, in failing to give Congress official information in due time, of the moneys drawn by him from Europe into the United States; which drawing commenced December, 1790, and continued till January, 1793; and of the causes of making such drafts.

6. *Resolved*, That the Secretary of the Treasury has without the instructions of the President of the United States, drawn more moneys borrowed in Holland into the United States than the President of the United States was authorized to draw, under the act of the 12th of August,

1790; which act appropriated two millions of dollars only, when borrowed, to the purchase of the Public Debt: And that he has omitted to discharge an essential duty of his office, in failing to give official information to the Commissioners for purchasing the Public Debt, of the various sums drawn from time to time, suggested by him to have been intended for the purchase of the Public Debt.

7. *Resolved*, That the Secretary of the Treasury did not consult the public interest in negotiating a Loan with the Bank of the United States, and drawing therefrom four hundred thousand dollars, at five per cent. per annum, when a greater sum of public money was deposited in various banks at the respective periods of making the respective drafts.

8. *Resolved*, That the Secretary of the Treasury has been guilty of an indecorum to this House, in undertaking to judge of its motives in calling for information which was demandable of him, from the constitution of his office; and in failing to give all the necessary information within his

1790; which act appropriated two millions of dollars only, when borrowed, to the purchase of the Public Debt: And that he has omitted to discharge an essential duty of his office, in failing to give official information to the Commissioners for purchasing the Public Debt, of the various sums drawn from time to time, suggested by him to have been intended for the purchase of the Public Debt.

7. *Resolved*, That the Secretary of the Treasury did not consult the public interest in negotiating a Loan with the Bank of the United States, and drawing therefrom four hundred thousand dollars, at five per cent. per annum, when a greater sum of public money was deposited in various banks at the respective periods of making the respective drafts.

8. *Resolved*, That the Secretary of the Treasury has been guilty of indecorum to this House, in undertaking to judge of its motives in calling for information which was demandable of him, from the constitution of his office; and in failing to give all the necessary information within his

knowledge, relatively to the subjects of the reference made to him of the 19th January, 1792, and of the 22d November, 1792, during the present session.

9. *Resolved*, That at the next meeting of Congress, the act of Sep 2d, 1789, establishing a Department of Treasury should be so amended as to constitute the office of the Treasurer of the United States a separate department, independent of the Secretary of the Treasury.

10. *Resolved*, That the Secretary of the Treasury has been guilty of maladministration in the duties of his office, and should, in the opinion of Congress, be removed from his office by the President of the United States.

knowledge, relatively to the subjects of the reference made to him of the 19th of January, 1792, and of the 22d November, 1792, during the present session.

9. *Resolved*, That a copy of the foregoing resolutions be transmitted to the President of the United States.

NOTES ON PARTY POLICY [1] J. MSS.

[Feb. ? 1793.]

AGENDA

Divide the Treasury department.
Abolish the bank.
Repeal the Excise law & let states raise the money.
Lower impost.

[1] This paper is undated, but is apparently an outline of the reforms in the government desired by Jefferson. In the absence of a definite platform of the newly formed democratic party, it is therefore of considerable importance, and is of especial interest as showing Jefferson's

Treasurer to pay and receive cash not bills.

Repeal irredeemable quality and borrow at 4. pr. cent.

Exclude paper holders.

Condemn report of.

THE ASSUMPTION [1]

[Feb. ? 1793.]

The assumption of the State debts in 1790, was a supplementary measure in Hamilton's fiscal system. When attempted in the House of Representatives it failed. This threw Hamilton himself & a number of members into deep dismay. Going to the President's one day I met Hamilton, as I approached the door, his look was sombre, haggard, & dejected beyond description, even his dress uncouth & neglected, he asked to speak with me, we stood in the street near the door, he opened the subject of the assumption of the State debts, the necessity of it in the general fiscal arrangement & its indispensible necessity towards a preservation of the union: and particularly of the New England States, who had made great expenditures during the war on expeditions which tho' of their own undertaking were for the common cause: that they considered the assumption of these by the Union so just, and it's denial so probably injurious

plans to break up the "Treasury Junto," by dividing the treasury, and by excluding from Congress all holders of Bank stock. The report referred to is probably Hamilton's report on the foreign loans of Jan. 3, 1793, which was an especially obnoxious one to Jefferson.

[1] Undated, but probably prepared at this time as a sort of vindication of his own conduct.

that they would make it a *sine qua non* of a continuance of the Union That as to his own part, if he had not credit enough to carry such a measure as that he could be of no use & was determ^d to resign, he observed at the same time, that tho' our particular business laid in separate departments, yet the Administration & it's success was a common concern, and that we should make common cause in supporting one another. He added his wish that I would interest my friends from the South, who were those most opposed to it. I answered that I had been so long absent from my country that I had lost a familiarity with it's affairs, and being but lately returned had not yet got into the train of them, that the fiscal system being out of my department I had not yet undertaken to consider & understand it, that the assumption had struck me in an unfavorable light, but still not having considered it sufficiently I had not concerned in it, but that I would revolve what he had urged in my mind. It was a real fact that the Eastern & Southern members (S. Carolina however was with the former) had got into the most extreme ill-humor with one another. This broke out on every question with the most alarming heat, the bitterest animosities seemed to be engendered, and tho' they met every day, little or nothing could be done from mutual distrust & antipathy. On considering the situation of things I thought the first step towards some conciliation of views would be to bring Mr. Madison & Col^o Hamilton to a friendly discussion of the subject. I immediately wrote to each to come and dine with me the next day, mentioning

that we should be alone, that the object was to find some temperament for the present fever, and that I was persuaded that men of sound heads & honest views needed nothing more than explanation and mutual understanding to enable them to unite in some measures which might enable us to get along. They came, I opened the subject to them, acknowledged that my situation had not permit[d] me to understand it sufficiently but encouraged them to consider the thing together. They did so, it ended in Mr. Madison's acquiescence in a proposition that the question should be again brought before the house by way of amendm[t] from the Senate, that tho' he would not vote for it, nor entirely withdraw his opposition, yet he should not be strenuous, but leave it to it's fate. It was observed, I forget by which of them, that as the pill would be a bitter one to the Southern States, something should be done to soothe them, that the removal of the seat of Government to the Patowmac was a just measure, & would probably be a popular one with them and would be a proper one to follow the assumption. It was agreed to speak to Mr. White & Mr. Lee whose districts lay on the Patowmac and to refer to them to consider how far the interests of their particular districts might be a sufficient inducement in them to yield to the assumption. This was done. Lee came into it without hesitation, Mr. White had some qualms but finally agreed. The measure came down by way of amendment from the Senate and was finally carried by the change of White's & Lee's votes. But the removal to Patowmac could not be carried unless

Pennsylvania could be engaged in it. This Hamilton took on himself, and chiefly, as I understood, through the Agency of Robert Morris, obtained a vote of that State, on agreeing to an intermediate residence at Philadelphia. This is the real history of the assumption, about which many erroneous conjectures have been published. It was unjust in itself, oppressive to the States and was acquiesced in merely from a fear of discussion. While our Government was still in it's most infant state, it enabled Hamilton so to strengthen himself by corrupt services to many that he could afterwards carry his bank scheme, and every measure he proposed in defiance of all opposition, in fact it was a principal ground whereon was reared up that speculating phalanx, in & out of Congress which has since been able to give laws to change the political complexion of the Government of the U. S.

QUESTIONS AS TO FRANCE [1] W. MSS.

[Feb. 12, 1793.]

Questions arising on the application of France for 3. millions of livres to be sent in Provisions to France.

I. 1. Has the Legislature furnished the money?
2. Is that money in it's place, or has it been withdrawn for other purposes?

[1] Sent to the President with the following letter:

PHILADELPHIA Feb. 12. 1793.

SIR,—According to the desire you expressed the other day when speaking of the application of France for 3. millions of livres, I have the honour to inclose a statement of the Questions which appear to me to enter into the consideration of that application. After putting

3. If it has, should we not take the first proper occasion of rectifying the transaction by repaying the money to those for whom the law provided it?
4. Is the application from France for an *arrearage* or an *advance?*
5. Have we money any where at command to answer this call?
6. If we have not, should we not procure it by loan under the act for borrowing 12. millions ?

II. Whether & How far we may venture to pay in advance?

NOTES ON APPLICATION OF FRANCE

Feb. 12, 1793.

I. The First question is Whether the application of the Executive of France for 3. millions of livres = 544,500 Doll. is to be complied with? But to be in condition to solve this, some preliminary Queries & Observations are necessary.

them on paper, I saw that some developements & observations would be necessary to explain their propriety & connection. These therefore I put down summarily on another paper, also inclosed. As they relate to the affairs of another department, some of these ideas may be wrong. You will be readily able however to correct them from the information you possess, or may procure from that department. Still, however, combining & weighing them with the ideas of others, and most of all, trying them by your own judgment, they may contribute to enable you to form an ultimate decision of what is right; in which decision no man on earth has more confidence than he who has the honor to be with sincere and affectionate respect, Dear Sir, Your most obed^{t} & most humble serv^{t}

Qu. Has the Legislature done their part, by providing the money?

The Acts of 1790. Aug. 4. c. 34. §. 2. authorized the President to borrow 12. millions of dollars & appropriat[d] them to paym[t] first of arrears & instalments of the *foreign debt*, & then to the *residue* of that debt.

The act of 1790. Aug. 12. c. 47. authorized the Presid[t] to borrow 2,000,000 D. to purchase up the public debt. It appropriated certain surplusses of revenue to the same object, & put the application of the whole under the direction of a board with the approbation of the President.

19,550,000 florins were borrowed under the authority of the two acts, so that any part of them might be applied to either purpose. But the surplusses of revenue having sufficed for the orders of the Board for the sinking fund they never called for any part of the loans.[1] The whole therefore of this nett produce may be considered as appropriated to the foreign debt.

The Treasury Report of Jan. 3. 1793. states the application of the whole of this to it's proper purposes except (page. 3) a balance of

5.649.621[£]—2[s]—8[d]

which is carried on to page 5. & there stated as equal to 2.304,769[D]—13

[1] The bank law authorized a temporary use of those funds to pay the subscription of the U. S. to that institution. It is not noticed here because the permission was never used. See Treasury Report, Feb. 4. pa. 7. *T. J.*

Part of it is stated there to have been applied to purposes to *which it was not applicable by law*, part transferred to the Bank for purposes not explained. We must therefore consider it as a loan by one fund to another, to be replaced afterwards. There follow however in the same page two Items, fairly chargeable on the Foreign fund. So that on the whole the account stands thus.

Borrowed from the Foreign for the Domestic Funds.....		2,304,769.^{D}13
Paid by the Domestic for the Foreign fund to S^{t} Domingo.....	726,000^{D}	
To foreign officers.....	191,316.90	917,360.90
Balance in favor of Foreign fund		1.387.452.23

It appears then that the Legislature has furnished & appropriated the money, and if it is not in hand it is by the act of the Executive department.

The Executive (into whose hands the money is confided) has the power, tho' not the right, to apply it contrary to it's legal appropriations.

Cases may be imagined however where it would be their duty to do this. But they must be cases of *extreme necessity.*

The paim^{t} of interest to the Domestic creditors has been ment^{d} as one of the causes of divert^{g} the foreign fund. But this is not an object of greater necessity than that to which it was legally appropriated. It

is taking the money from our *foreign creditors* to pay it to the *domestic ones;* a preference which neither justice, gratitude nor the estimation in which these two descriptions of creditors are held in this country will justify.

The *payment of the Army* and the *daily expences of the government* have been also ment[d] as objects of withdrawing this money. These indeed are pressing objects, and might produce that degree of distressing necessity which would be a justifica[n]. But the possibility that our domestic finances can be in such a state of distressing necessity as to oblige us to recur to borrowed money for our daily subsistence, will be *doubted* on the ground of the communications to the last and present session of Congress.

It will be *denied* on the ground of the Treasury Report of Feb. 4. pa. 5. and 13. where it appears that 614,593. Dollars of this money has been drawn away, not to furnish present necessities, but to be put out of our power for 3, 6, & 9 months. It was ready money there, it was payable there; it has been drawn here, & the draughts (which are always a ready money article) have been parted with on long credit. Why?

If it should appear that the Legislature has done their part in furnishing the money for the French nation, and that the Executive departments have applied it to other purposes, then it will certainly be desirable that we get back on legal ground as soon as possible, by pressing on the Domestic funds and availing ourselves of any proper opportunity which may be furnished of replacing the money to the foreign creditors. Does the present application from

the French government furnish such an occasion? If it be an *arrearage*, it does? If it be an *advance*, we shall be more free to calculate our own necessities against theirs. The next question then is

Are we in *arrears* for instalments or interest with France?

On this head I cannot pretend to accurate information.

From the best I can get at, it would appear that we were in arrears with France at the close of 1792. 668,491. Doll.

But it is possible that certain sums of interest for the years 1786, 7, 8, 9, or some of them, may have been paid. Of this I am not informed. If they have been all paid, it will make a deduction of 294,666, D. and will reduce the balance at the close of 1792 to about..... 373,825
then add instalments & interest payable in 1793, about..... 628,008

makes the whole sum payable now, and shortly to France..... 1,001,833

still this statement may be liable to corrections from the treasury, but I think they cannot be considerable. The next question then is

Have we the money on hand?

The balance remaining in Amsterdam [see Report Jan 3. pa. 3.]
407,287 fl. = 166,153 D.
Cash in the Banks & Treasury [see Rep[t] Feb. 4. pa. 13. first 3. articles] 1,567,325

makes the whole sum actually in hand.. 1,733,478

but if the Treasury from impending calls of more distressing necessity cannot repay to the Foreign fund the sum of 378,347 D. [which with the 166,153 D. in Amsterdam will amount to 544,500 D.] in part of what it has borrowed from that then it becomes a question Whether the President should not instantly set on foot a loan for the 378,347. D. under the authority of the Act for borrowing 12 millions, in order to comply with the application, if it be an *arrearage?*

A famine is probable in France.

The Ministers there will throw the blame on any shoulders to clear their own.

They will shift it on us before the tribunal of their own people. We have interests which will be injured by this.

Such a charge on their part, may raise one in this country on the Executive. To what extent this may be pressed, will depend on the events which will happen.

The diversion of this money from it's legal appropriation offers a flaw against the Executive which may place them in the wrong.

II. The Second Principal question is Whether and How far we may undertake to pay in *advance* of the exigible part of our debt to France?

The law authorizes the President to pay the whole, if it can be done on terms advantageous to the U. S. Yet it is left discretionary in him, and the point of *discretion* is the one to be considered.

Before a judgment can be formed as to future payments, it seems necessary to disentangle the

Foreign from the Domestic fund, that the balance of the former may be known, and in hand, to be operated on.

This done, we shall see our way clear to judge When & to What extent to open a new loan.

The annual instalments & interest will, for some years to come, be between 5 and 600,000 Doll.

Perhaps it may be found no bad rule (subject however to the circumstances of the time) to borrow the preceding year what is to be paid the next, & to pay as fast as we borrow.

This will keep us part of a year in advance, will be grateful to our creditors, & honorable to ourselves.

Circumstances may arise which may render it expedient to borrow and pay faster, perhaps the whole.

The state & prospect of things in France at the time will materially influence this question.

CIRCULAR LETTER TO FOREIGN MINISTERS [1]

PHILADELPHIA Feby 13, 1793.

SIR,—The House of Representatives having referred to me to Report to them, the nature and extent

[1] This letter was sent to Ternant, Van Berckel, Hammond, and Viar and Jaudenes. Each letter was accompanied by a note on the commerce of the diplomat's country, and were as follows:

France receives favorably our Bread-stuff, Rice, Wood, Pot and Pearl ashes.

A duty of 5. Sous the kintal, or nearly 4½ Cents, is paid on our Tar, Pitch and Turpentine. Our Whale Oils pay six livres the kintal, and are the only foreign whale oils admitted. Our Indigo pays 5. Livres the kintal, their own two and a half: but a difference of quality, still more than a difference of duty prevents it's seeking that market.

Salted Beef is received freely for re-exportation; but, if for home

of the privileges and restrictions on the Commerce of the United States with foreign nations, I have accordingly prepared a Report on that subject. Being par-

consumption, it pays 5. Livres the kintal. Other salted provisions pay that duty in all cases, and salted fish is made lately to pay the prohibitory one, of 20 Livres the kintal.

Our Ships are free to carry thither all foreign goods, which may be carried in their own or any other vessels, except Tobaccos not of our own growth; and they participate with theirs, the exclusive carriage of our whale oils.

During their former government, our Tobacco was under a monopoly, but paid no duties; and our Ships were freely sold in their ports and converted into national bottoms. The first national Assembly took from our Ships this privilege. They emancipated Tobacco from it's monopoly, but subjected it to duties of 18 Livres 15 sous the kintal, carried in their own vessels, and 25 Livres, carried in ours; a difference more than equal to the freight of the article.

They and their Colonies consume what they receive from us.

France by a standing Law, permits her West India possessions to receive directly our vegetables, Live Provisions, Horses, Wood, Tar, Pitch, and Turpentine, Rice and Maize, and prohibits our other Bread stuff: but a suspension of this prohibition having been left to the colonial Legislature, in times of scarcity, it was formerly suspended occasionally, but latterly without interruption.

Our Fish and salted Provisions (except Pork) are received in their Islands, under a Duty of 3 Colonial Livres the kintal, and our vessels are as free as their own to carry our Commodities thither, and to bring away Rum and Molasses.

The *United Netherlands* prohibit our Pickled Beef and Pork, Meals and Bread of all sorts, and lay a prohibitory duty on Spirits distilled from Grain.

All other of our productions are received on varied duties, which may be reckoned on a medium, at about 3 per cent.

They consume but a small proportion of what they receive. The residue is partly forwarded for consumption in the inland parts of Europe, and partly reshipped to other maritime Countries. On the latter portion, they intercept, between us and the consumer so much of the value as is absorbed by the charges attending an intermediate deposit.

Foreign goods, except some East India Articles are received in the vessels of any nation.

ticularly anxious that it may be exact in matters of fact, I take the liberty of putting into your hands *privately and informally*, an extract of such as relate to

Our ships may be sold and naturalized there, with exceptions of one or two privileges, which scarcely lessen their value.

In the American Possessions of the United Netherlands, and Sweden, our vessels and produce are received, subject to duties, not so heavy as to have been complained of.

Great Britain receives our Pot and Pearl Ashes free, while those of other Nations pay a duty of $2^s/3^d$ the kintal. There is an equal distinction in favor of our bar iron; of which article, however, we do not produce enough for our own use. Woods are free from us, whilst they pay some small duty from other Countries. Indigo and Flaxseed are free, from all Countries. Our Tar and Pitch pay 11^d sterling the Barrel. From other alien Countries they pay about a penny and a third more.

Our Tobacco, for their own consumption, pays 1/3 Sterling the pound, custom and Excise, besides heavy expenses of collection; and rice, in the same case, pays 7/4 Sterling the hundred weight, which-rendering it too dear as an article of common food, it is consequently used in very small quantity.

Our salted fish, and other salted provisions, except Bacon, are prohibited. Bacon and whale oils are under prohibitory duties: so are our Grains, Meals and Bread, as to internal consumption, unless in times of such scarcity as may raise the Price of Wheat to 50/. sterling the quarter; and other grains and meals in proportion.

Our Ships, though purchased and navigated by their own subjects are not permitted to be used, even in their trade with us.

While the Vessels of other nations are secured by standing Laws, which cannot be altered but by the concurrent will of the three Branches of the British legislature, in carrying thither any produce or manufacture of the Country to which they belong, which may be lawfully carried in any vessels, ours, with the same prohibition of what is foreign, are further prohibited by a standing law (12. Car. 2. 18, § 3,) from carrying thither all and any of our domestic productions and manufactures. A subsequent Act, indeed, has authorized their Executive to permit the carriage of our own productions in our own bottoms, at it's sole discretion; and the permission has been given from year to year by Proclamation; but subject every moment to be withdrawn on that single will, in which event, our vessels having anything on board, stand interdicted from the Entry of all British ports. The disadvantage of a tenure, which may be so suddenly discontinued, was

our commerce with your nation, in hopes that if you can either enlarge or correct them you will do me that favor. It is safer to suppress an error in its first conception than to trust to any after correction; and

experienced by our merchants on a late occasion, when an official notification that this law would be strictly enforced, gave them just apprehensions for the fate of their vessels and cargoes Dispatched or destined to the Ports of Great Britain. It was privately believed, indeed, that the Order of that Court went further than their intention, and so we were, afterwards, officially informed: but the embarrassments of the moment were real and great, and the possibility of their renewal lays our commerce to that country under the same species of discouragement, as to other Countries, where it is regulated by a single Legislator; and the distinction is too remarkable not to be noticed, that our navigation is excluded from the security of fixed Laws, while that security is given to the navigation of others.

Our Vessels pay in their ports 119 Sterling per ton, light and Trinity dues, more than is paid by British ships, except in the port of London, where they pay the same as British.

The greater part of what they receive from us, is re-exported to other Countries, under the useless charges of an intermediate deposit and double voyage.

From tables published in England, and composed, as is said, from, the Books of their Custom houses, it appears that of the Indigo imported there in the years 1773,–4,–5, one third was re-exported, and from a document of authority, we learn that of the Rice and Tobacco imported there before the war, four fifths were re-exported. We are assured, indeed, that the Quantities sent thither for re-exportation since the war, are considerably diminished: yet less so than reason and national interest would dictate. The whole of our Grain is re-exported, when wheat is below 50 the Quarter, and other Grains in proportion.

Great Britain admits in her Islands our Vegetables, Live Provisions, Horses, Wood, Tar, Pitch and Turpentine, Rice and Bread stuff, by a Proclamation of her Executive limited always to the term of a year but hitherto renewed from year to year. She prohibits our salted fish and other salted Provisions. She does not permit our Vessels to carry thither our own produce. Her vessels alone, may take it from us, and bring in exchange, Rum, Molasses, Sugar, Coffee, Cocoa nuts, Ginger and Pimento. There are, indeed, some freedoms in the Island of Dominica, but under such circumstances as to be little used by us. In the British continental countries, and in New Foundland, all our productions are prohibited, and our vessels forbidden to enter their

a confidence in your sincere desire to communicate or to reestablish any truths which may contribute to a perfect understanding between our two nations, has induced me to make the present request. I wish it had been in my power to have done this sooner and thereby have obtained the benefit of your having more time to contemplate it: but circumstances have retarded the entire completion of the report till

ports. Their Governors, however, in times of distress, have power to permit a temporary importation of certain Articles in their own Bottoms, but not in ours.

Our citizens cannot reside as merchants or Factors within any of the British Plantations, this being expressly prohibited by the same Statute of 12. Car. 2, c. 18, commonly called their navigation act.

Of our commercial objects, *Spain* receives favorably our Breadstuff, salted Fish, Wood, Ships, Tar, Pitch and Turpentine. On our meals, however, when re-exported to their colonies, they have lately imposed duties of from half a dollar to two dollars the Barrel, the Duties being so proportioned to the current price of their own Flour, as that both together are to make the constant sum of nine Dollars per Barrel.

They do not discourage our Rice, pot and Pearl ash, Salted provisions, or Whale Oil: but these Articles being in small demand at their markets, are carried thither but in a small degree. Their demand for Rice, however, is increasing. Neither Tobacco, nor Indigo are received there.

Themselves and their Colonies are the actual consumers of what they receive from us.

Our navigation is free with the Kingdom of Spain, foreign Goods being received there in our Ships on the same conditions as if carried in their own, or in the vessels of the country of which such goods are the manufacture or produce.

Spain and *Portugal* refuse, to those parts of America which they govern, all direct intercourse with any people but themselves. The commodities in mutual demand, between them and their neighbors, must be carried to be exchanged in some part of the dominant country, and the transportation between that and the subject State, must be in a domestic bottom.

See three letters following, and the reports *post*, for more on this subject.

the Congress is approaching its end, which will oblige me to give it in within three or four days.

P. S. The Report having been prepared before the late diminution of the duties on our tobacco, that circumstance will be noted in the letter which will cover the report.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA Feb. 14. 1793.

SIR,—It will require some few days yet to estimate the probable calls which may come on the treasury, and the means of answering them. Till which is done a final answer cannot be given to your application for the three millions of livres. But in the mean time that your purchases of provision may be begun, arrangements may be made with the Secretary of the Treasury for the immediate payment of one hundred thousand dollars on account of our debt to France. I can assure you that we shall have every possible wish & disposition to find ourselves able to comply with the residue of the application, & as early as possible.

TO THE PRESIDENT OF THE UNITED STATES

D. S. MSS.

Feb. 16. 1793.

Th: Jefferson has the honor to send to the President the copy of a Report he proposes to give into the H. of Representatives on Monday on the subject of a Petition of John Rogers referred to him.

The President will see by Mr. Hammond's letter now inclosed, that he has kindled at the facts stated in Th: J's report on commerce. Th: J. adds the draught of an Answer to him, if the President should think that any answer should be given. It is sometimes difficult to decide whether indiscretions of this kind had better be treated with silence, or due notice. The former perhaps would be best, if it were not that his letter would go unanswered to his court, who might not give themselves the trouble of seeing that he was in the wrong. Th: J. will wait on the President immed.

REPORT ON THE PETITION OF JOHN ROGERS

February 16. 1793.

The Secretary of State, to whom was referred, by the House of Representatives of the United States, the petition of John Rogers, setting forth, that as an officer of the State of Virginia, during the last war, he became entitled to two thousand acres of lands on the north-east side of the Tennessee, at its confluence with the Ohio, and to two thousand four hundred acres in different parcels, between the same river and the Mississippi, all of them within the former limit of Virginia, which lands were allotted to him under an act of the Legislature of Virginia, before its deed of cession to the United States; that by the treaty of Hopewell, in 1786, the part of the country comprehending these lands was ceded to the Chickasaw Indians; and praying compensation for the same.

Reports, That the portion of country comprehending the said parcels of land, has been ever understood to be claimed, and has certainly been used, by the Chickasaw and Cherokee Indians for their hunting grounds. The Chickasaws holding exclusively from the Mississippi to the Tennessee, and extending their claim across that river, eastwardly, into the claims of the Cherokees, their conterminous neighbors.

That the government of Virginia was so well apprized of the rights of the Chickasaws to a portion of country within the limit of that State, that about the year 1780, they instructed their agent, residing with the southern Indians, to avail himself of the first opportunity which should offer, to purchase the same from them, and that, therefore, any act of that Legislature allotting these lands to their officers and soldiers must probably have been passed on the supposition, that a purchase of the Indian right could be made, which purchase, however, has never been made.

That, at the treaty of Hopewell, the true boundary between the United States on the one part, and the Cherokees and Chickasaws on the other, was examined into and acknowledged, and by consent of all parties, the unsettled limits between the Cherokees and Chickasaws were at the same time ascertained, and in that part particularly, were declared to be the highlands dividing the waters of the Cumberland and Tennessee, whereby the whole of the petitioner's locations were found to be in the Chickasaw country.

That the right of occupation of the Cherokees and

Chickasaws in this portion of the country, having never been obtained by the United States, or those under whom they claim it, cannot be said to have been ceded by them at the treaty of Hopewell, but only recognized as belonging to the Chickasaws, and retained to them.

That the country south of the Ohio was formerly contested between the Six Nations and the southern Indians for hunting grounds.

That the Six Nations sold for a valuable consideration to the then government their right to that country, describing it as extending from the mouth of the Tennessee upwards. That no evidence can at this time and place be procured, as to the right of the southern Indians, that is to say, the Cherokees and Chickasaws, to the same country; but it is believed that they voluntarily withdrew their claims within the Cumberland river, retaining their right so far, which consequently could not be conveyed from them, or to us, by the act of the Six Nations, unless it be proved that the Six Nations had acquired a right to the country between the Cumberland and Tennessee rivers by conquest over the Cherokees and Chickasaws, which it is believed can not be proved.

That, therefore, the locations of the petitioner must be considered as made within the Indian territory, and insusceptible of being reduced into his possession, till the Indian right be purchased.

That this places him on the same footing with Charles Russell and others, officers of the same State, who had located their bounty lands in like manner, within the Chickasaw lines, whose case was laid before

the House of Representatives of the United States at the last session, and remains undecided on; and that the same and no other measure should be dealt to this petitioner which shall be provided for them.

TO THE BRITISH MINISTER J. MSS.

(GEORGE HAMMOND)

PHILADELPHIA Feb. 16, 1793.

SIR,—I have duly received your letter of yesterday with the statement of the duties payable on articles imported into Great Britain. The Object of the Report, from which I had communicated some extracts to you, not requiring a minute detail of the several duties on every article, in every country, I had presented both articles & duties in groups, & in general terms, conveying information sufficiently accurate for the Object. And I have the satisfaction to find, on reexamining the expressions in the Report, that they correspond with your statement as nearly as generals can with particulars. The difference which any nation makes between our commodities & those of other countries, whether favorable or unfavorable to us, were proper to be noted: but they were subordinate to the more important questions What countries *consume* most of our produce? exact the lightest duties? and leave to us the most favorable balance?

You seem to think that in the mention made of your *official* communication of Apr. 11, 1792, that the clause in the Navigation act (prohibiting our own produce to be carried in our own vessels into the

British European dominions) would be strictly enforced in future, and the *private belief* expressed at the same time that the intention of that court did not go so far, that the latter terms are not sufficiently accurate. About the fact it is impossible we should differ, because it is a written one. The only difference then must be a merely verbal one. For thus stands the fact. In your letter of Apr. 11, you say you have received, by a circular dispatch from your court directions to inform this government that it had been determined in future strictly to inforce this clause of the navigation act. This I consider as an *official* notification. In your answer of Apr. 12, to my request of explanation, you say "in answer to your letter of this day, I have the honor of observing that I have no other instructions upon the subject of my communication than such as are contained in the circular dispatch of which I stated the purport in my letter dated yesterday. I have however no difficulty in assuring you that the result of my *personal conviction* is that the determination of his Majesty's government to inforce the clause of the act &c. is not intended to militate against the Proclamation &c." This *personal conviction* is expressed in the Report as a *private belief* in contradistinction to the *official* declaration. In your letter of yesterday you chose to call it "a formal assurance of your conviction." As I am not scrupulous about words, when they are once explained, I feel no difficulty in substituting in the Report, your own words "*personal conviction*" for those of "*private belief*" which I had thought equivalent. I cannot indeed insert that it was a

formal assurance, lest some readers might confound this with an *official* one, without reflecting that you could not mean to give *official* assurance that the clause would be enforced, & *official* assurance at the same time of your personal conviction that it would not be enforced.

I had the honor to acknowledge verbally the receipt of your letter of the 3d of August, when you did me that of making the enquiry verbally about six weeks ago: and I beg leave to assure you that I am with due respect, Sir, Your most obed't & most humble serv't.[1]

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA Feb. 17, 1793.

SIR,—I have duly received your letter of yesterday, and am sensible of your favor in furnishing me

[1] There is also another letter of the same date and tenor as the above, endorsed, "not sent," which differs only verbally except in its last paragraph, which reads as follows:

"I had the honor to acknowledge the receipt of your letter of the 3d of August, when you did me that of making the enquiry verbally about six weeks ago, but to the remaining interrogatory, whether I 'ever laid it before the two houses of legislature'? I will take my answer from an authority to which I am sure you will subscribe, & which is so replete with good sense & it's terms so well chosen, that I need seek nothing out of it. 'I must therefore observe to you, Sir, that in my quality of Secretary of State to the United States, I cannot receive any communication on the part of foreign ministers but for the purpose of laying it before the President, and of taking his orders upon it; & that the deliberations of the two houses of legislature as well as the communications, which it may please the President to make to them, relative to the affairs of this country, are objects entirely foreign from all diplomatic consequence, and upon which it is impossible for me to enter into any discussion whatever with ministers of other countries.'"

with your observations on the Statement of the commerce between our two nations, of which I shall avail myself for the good of both. The omission of our participation with your vessels in the exclusive transportation of our tobacco was merely that of the copy, as it was expressed in the original draught where the same circumstance respecting our whale oil was noted: and I am happy that your notice of it has enabled me to reinstate it before the Report goes out of my hand.

I must candidly acknolege to you that I do not foresee the same effect in favor of our navigation from the late reduction of duties on our tobaccos in France which you seem to expect. The difference in favor of French vessels is still so great as in my opinion to make it their interest to quit all other branches of the carrying business, to take up this: and as your stock of shipping is not adequate to the carriage of all your exports, the branches which you abandon will be taken up by other nations. So that this difference thrusts us out of the tobacco carriage to let other nations in to the carriage of other branches of your commerce. I must therefore avail myself of this occasion to express my hope that your nation will again revise this subject & place it on more equal grounds. I am happy in concurring with you more perfectly in another sentiment, that as the principles of our governments become more congenial, the links of affection are multiplied between us. It is impossible they should multiply beyond our wishes. Of the sincere interest we take in the happiness & prosperity of your nation you have had the most unequivocal proofs.

TO THE FRENCH MINISTER J. MSS.
(JEAN BAPTISTE TERNANT)

PHILADELPHIA Feb 23, 1793.

SIR,—I have laid before the President of the U S your notification of the 17th instant, in the name of the Provisory Executive council, charged with the administration of your government, that the French nation has constituted itself into a Republic. The President receives with great satisfaction this attention of the Executive council, & the desire they have manifested of making known to us the resolution entered into by the National convention, even before a definitive regulation of their new establishment could take place. Be assured Sir that the government & the citizens of the U S. view with the most sincere pleasure every advance of your nation towards it's happiness, an object essentially connected with it's liberty, & they consider the union of principles & pursuits between our two countries as a link which binds still closer their interests & affections. The genuine & general effusions of joy which you saw overspread our country on their seeing the liberties of yours rise superior to foreign invasion & domestic trouble have proved to you that our sympathies are great & sincere, and we earnestly wish on our part that these our mutual dispositions may be improved to mutual good by establishing our commercial intercourse on principles as friendly to natural right & freedom as are those of our government. I am with sincere esteem & respect, Sir, your most obedient & most humble servant.

CABINET OPINION ON FRENCH APPLICATION

J. MSS.

Feb. 25. 1793.

The President desires the opinions of the heads of the three departments, and of the attorney-general, on the following question, to wit.

Mr. Ternant having applied for money equivalent to three millions of livres, to be furnished on account of our debt to France at the request of the Executive of that country, which sum is to be laid out in provisions within the U. S. to be sent to France. Shall the money be furnished?

The Secretary of the Treasury stated it as his opinion, that making a liberal allowance for the depreciation of assignats, (no rule of liquidation having been yet fixed,) a sum of about 318,000 Dollars may not exceed the arrearages equitably due to France to the end of 1792, and that the whole sum asked for may be furnished, within periods capable of answering the purpose of Mr. Ternant's application, without a derangement of the Treasury.

Whereupon the Secretaries of State & War, & the Attorney General, are of opinion that the whole sum asked for by Mr. Ternant ought to be furnished: the Secretary of the Treasury is of opinion that the supply ought not to exceed the above-mentioned sum of 318,000 Dollars.

CABINET OPINION ON INDIAN WAR J. MSS.

Feb. 25, 1793

The President having required the attendance of the heads of the three departments, and of the at-

torney general, at his house, on Monday the 25th of Feb. 1793, the following questions were proposed, and answers given:

1. The Governor of Canada having refused to let us obtain provisions from that province, or to pass them along the water communication to the place of treaty with the Indians; and the Indians having refused to let them pass peaceably along what they call the bloody path, the Governor of Canada at the same time proposing to furnish the whole provisions necessary, ought the treaty to proceed?

Answer unanimously, it ought to proceed.

2. Have the Executive, or the Executive & Senate together, authority to relinquish to the Indians the right of soil of any part of the land north of the Ohio, which has been validly obtained by former treaties?

The secretary of the Treasury, the Secretary at War, & attorney general, are of opinion that the Executive & Senate have such authority, provided that no grants to individuals, nor reservations to States, be thereby infringed. The secretary of state is of opinion they have no such authority to relinquish.

3. Will it be expedient to make any such relinquishment to the Indians, if essential to peace?

The Secretaries of the Treasury & War, & the Attorney General, are of opinion it will be expedient to make such relinquishment if essential to peace, provided it do not include any lands sold or reserved for special purposes (the reservations for trading places excepted). The Secretary of state is of opinion that the Executive and Senate have authority to

stipulate with the Indians, and that if essential to peace, it will be expedient to stipulate that we will not settle any lands between those already sold or reserved for special purposes, and the lines heretofore validly established with the Indians.

4. Whether the Senate shall be previously consulted on this point?

The opinion unanimously is that it will be better not to consult them previously.

TO JAMES MADISON J. MSS.

March. 1793.

The idea seems to gain credit that the naval powers combined against France will prohibit supplies even of provisions to that country. Should this be formally notified I should suppose Congress would be called, because it is a justifiable cause of war, & as the Executive cannot decide the question of war on the affirmative side, neither ought it to do so on the negative side, by preventing the competent body from deliberating on the question. But I should hope that war would not be their choice. I think it will furnish us a happy opportunity of setting another example to the world, by shewing that nations may be brought to do justice by appeals to their interests as well as by appeals to arms. I should hope that Congress instead of a denunciation of war, would instantly exclude from our ports all the manufactures, produce, vessels & subjects of the nations committing this aggression, during the continuance

of the aggression & till full satisfaction made for it. This would work well in many ways, safely in all, & introduce between nations another umpire than arms. It would relieve us too from the risks & the horrors of cutting throats. The death of the king of France has not produced as open condemnations from the Monocrats as I expected. I dined the other day in a company where the subject was discussed. I will name the company in the order in which they manifested their partialities; beginning with the warmest Jacobinism & proceeding by shades to the most heart felt aristocracy. Smith (N. Y.) Coxe. Stewart. T. Shippen. Bingham. Peters. Breck. Meredith. Wolcott. It is certain that the ladies of this city, of the first circle are all open-mouthed against the murderers of a sovereign, and they generally speak those sentiments which the more cautious husband smothers. I believe it is pretty certain that Smith (S. C.) and Miss A. are not to come together. Ternant has at length openly hoisted the flag of monarchy by going into deep mourning for his prince. I suspect he thinks a cessation of his visits to me a necessary accompaniment to this pious duty. A connection between him & Hamilton seems to be springing up. On observing that Duer was secretary to the old board of treasury, I suspect him to have been the person who suggested to Hamilton the letter of mine to that board which he so tortured in his Catullus. Dunlap has refused to print the piece which we had heard of before your departure, and it has been several days in Bache's hands, without any notice of it. The President will

leave this about the 27th inst., & return about the 20th of April. Adieu.

CABINET OPINION ON FRENCH DEBT J. MSS.

March 2, 1793.

The President communicated to the Secretary of State, the Secretary of the Treasury, the Secretary of War, and the Attorney General of the United States, a letter from William S. Smith, Esq., of the 28th of February past, to the Secretary of the Treasury, with sundry papers,—No. 1, 2, and 3 and 4 relating to a negotiation for changing the form of the debt to France; and required their opinion what answer should be returned to the application.

The opinion unanimously is, that the Secretary of the Treasury shall inform Mr. Smith that the government of the United States have made engaged payments to France to the extent which is at present consistent with their arrangements; and do not judge it advisable to take any measures on the subject of his application.

TO THOMAS MANN RANDOLPH J. MSS.

PHILADELPHIA Mar. 3. 1793.

DEAR SIR,—Since my letter of the last week to my daughter yours of the 7th to me & of the 14th to Maria have come to hand & made us happy by announcing that all are well. I informed you in my last of a scheme I had of leasing my lands on the Shadwell side of the river. Since that I have learned that,

about the same time, two persons from the Head of Elk (the neighborhood where I was endeavoring to procure tenants) set out to examine my lands in order to decide for themselves & report to their neighbors. As they went without any letters from me, I am extremely afraid they may get into hands which may mislead them and, on their return, throw cold water on an operation which bid fair to succeed to any extent I might have chosen to carry it I wish my letter to you may have got to hand in time for their arrival. You have for some time past seen a number of reports from the Secretary of the Treasury on enquiries instituted by the H. of representatives. When these were all come in, a number of resolutions were prepared by Mr. Giles, expressing the truths resulting from the reports. These resolns you will see in Fenno's paper. Mr. Giles & one or two others were sanguine enough to believe, that the palpableness of the truths rendered a negative of them impossible, & therefore forced them on. Others contemplating the character of the present house, one third of which is understood to be made up of bank directors & stock jobbers who would be voting on the case of their chief: and another third of persons blindly devoted to that party, of persons not comprehending the papers, or persons comprehending them but too indulgent to pass a vote of censure, foresaw that the resolutions would be negatived by a majority of two to one. Still they thought that the negative of palpable truth would be of service, as it would let the public see how desperate & abandoned were the hands in which their interests were

placed. The vote turned out to be what was expected, not more than 3. or 4. varying from what had been conceived of them. The public will see from this the extent of their danger, and a full representation at the ensuing session will doubtless find occasion to revise the decision, and take measures for ensuring the authority of the laws over the corrupt manœuvres of the heads of departments under the pretext of exercising discretion in opposition to law. The elections have been favorable to the republican candidates every where South of Connecticut; and even in Massachusetts there is a probability that one republican will be sent who possesses the confidence of that description of men in that state (& which forms the mass of the state) and who will fulfil the only object needed, that of carrying back to them faithful accounts of what is done here. This they have never had, & it is all they need. My love to my dear Martha and am Dear Sir your's affectionately.

REPORT RELATIVE TO THE BOUNDARIES OF THE LANDS BETWEEN THE OHIO AND THE LAKES, ACQUIRED BY TREATIES FROM THE INDIANS

March 10 1793.

The Secretary of State, according to instructions received from the President of the United States,

Reports, That, for the information of the commissioners appointed to treat with the western Indians, he has examined the several treaties entered into with them subsequent to the declaration of Independence, and relating to the lands between the

Ohio and the lakes, and also the extent of the grants, reservations, and appropriations of the same lands, made either by the United States, or by individual States within the same period, and finds that the lands obtained by the said treaties, and not so granted, reserved, or appropriated, are bounded by the following lines, to wit:

Northwardly. By a line running from the fork of the Tuscarora's branch of the Muskingum, at the crossing-place above Fort Lawrence. Westwardly (towards the portage of the Big-Miami) to the main branch of that river, then down the Miami, to the fork of that river next below the old fort, which was taken by the French in 1752, thence due west to the river De la Panse, and down that river to the Wabash; which lines were established with the Wiandots, Delawares, Chippawas, and Ottawas, by the treaty of Fort McIntosh, and with the Shawanese by that of the Great Miami.

Westwardly. By the bounds of the Wabash Indians.

Eastwardly. By the million of acres appropriated to military claimants, by the resolution of Congress of October 23, 1787, and lying in the angle between the seventh range of townships counted westwardly, from the Pennsylvania boundary, and the tenth range counted from the Ohio northwardly along the said seventh, which million of acres may perhaps extend westwardly, so as to comprehend the twelfth range of townships, counted in that direction from the Pennsylvania boundary, under which view the said twelfth range may be assumed for the eastern

boundary of the territory now under consideration, from the said tenth range to the Indian line.

Southwardly. By the northern boundary of the said tenth range of townships to the Sioto river, and along the said river to what shall be the northern limits of the appropriations for the Virginia lines; (which two last lines are those of the lands granted to the Sioto company,) thence along what shall be the *northern* limits of the said appropriations of the Virginia line to the little Miami, and along the same to what shall be the northern limits of one million of acres of land purchased by John C. Symmes; thence due west along the said northern limit of the said John C. Symmes, to the Great Miami, and down the same to its mouth, then along the Ohio to General Clark's lands, and round the said lands to the Ohio again, and down the same to the Wabash, or the lands of the Indians inhabiting it. Which several lines are delineated on the copy of Hutchins' map accompanying this report; the dotted parts of the delineation denoting that they are conjectural. And it is further necessary to apprize the commissioners that though the points at which these several lines touch the Ohio, are taken from actual surveys, yet the country included by the said lines, not being laid down from actual survey, their lengths and intersections with each other, and with the water-courses, as appearing in the maps, are not at all to be relied on. No notice is here taken of the lands at the mouth of the Ohio appropriated for military bounties by the same resolution of Congress of October 22, 1787, nor of the settlement of Cahokea, Kaskaski,

Post Vincennes, &c., because these can concern no Indians but those of the Illinois and Wabash, whose interests should be transacted with themselves separately, and not be permitted to be placed under the patronage of the western Indians.

CABINET OPINION ON FILIBUSTERS

March 10, 1793.

At a meeting of the heads of departments and the Attorney-General at the President's, on the 10th day of March, 1793,

The intelligence from Kentucky and the territory northwest of the Ohio was laid before them: whereupon it was advised,

1. That a proclamation issue against the expeditions understood to be prepared in Kentucky for the invasion of the Spanish dominions.

2. That a representation be made to the Governor of Kentucky, upon the subject of his conduct, and giving information, under proper guards, of the steps which have been taken by government as to the Mississippi.

3. That a representation be also made to Congress; and

4. That General Wayne be instructed to post, if compatible with his other operations, a body of troops at Massac, in order to intercept by force, if necessary, any body of men which may descend the river for the purpose of the invasion aforesaid. From this fourth opinion the Secretary of State dissents.

TO THE GOVERNOR OF VIRGINIA J. MSS.
(HENRY LEE)

PHILADELPHIA, Mar. 11, 1793.

SIR,—On receipt of the letter with which you were pleased to honor me on the subject of the unsettled boundary between Virginia and the Southwestern territory, I laid it before the President, who communicated it to Congress. A committee was thereupon appointed by the house of representatives who reported a proposition for authorizing the President with the concurrence of the States of Virginia and Kentucky, to have the line extended, which proposition was passed by that house, but rejected by the Senate. Their motives for the rejection not being expressed, I can only add from private information that it was observed that the South western territory would be shortly entitled to a legislature of its own, & that it would be more just to give them an opportunity of acting for themselves, and also to leave the expence of the settlement to be borne by the states interested. I inclose you a copy of the bill passed by the Representatives.

TO THE U. S. MINISTER TO FRANCE[1] J. MSS.
(GOUVERNEUR MORRIS)

PHILADELPHIA, Mar. 12, 1793.

DEAR SIR,—Your Nos. 8. to 13. inclusive have been duly received. I am sensible that your situation must have been difficult during the transition

[1] See Ford's *Writings of Washington*, XII., 269, for Washington's comments on this letter.

from the late form of government to the reestablishment of some other legitimate authority, & that you may have been at a loss to determine with whom business might be done. Nevertheless when principles are well understood, their application is less embarrassing. We surely cannot deny to any nation that right whereon our own government is founded, that every one may govern itself according to whatever form it pleases, & change these forms at it's own will; & that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee, president or anything else it may chuse. The will of the nation is the only thing essential to be regarded. On the dissolution of the late constitution in France, by removing so integral a part of it as the king, the National assembly, to whom a part only of the public authority had been delegated, appear to have considered themselves as incompetent to transact the affairs of the nation legitimately. They invited their fellow citizens therefore to appoint a national convention. In conformity with this their idea of the defective state of the national authority, you were desired from hence to suspend further payments of our debt to France till new orders, with an assurance however to the acting power that the suspension should not be continued a moment longer than should be necessary for us to see the reestablishment of some person or body of persons authorized to receive paiment & give us a good acquittal; (if you should find it necessary to give any assurance or explanation at all.) In the

mean time we went on paying up the four millions of livres which had been destined by the last constituted authorities to the relief of St. Domingo. Before this was compleated we received information that a National assembly had met, with full powers to transact the affairs of the nation, and soon afterwards the Minister of France here presented an application for three millions of livres to be laid out in provisions to be sent to France. Urged by the strongest attachments to that country, and thinking it even providential that monies lent to us in distress could be repaid under like circumstances, we had no hesitation to comply with the application, and arrangements are accordingly taken for furnishing this sum at epochs accommodated to the demand and our means of paying it. We suppose this will rather overpay the instalments & interest due on the loans of 18. 6. and 10. millions to the end of 1792. and we shall certainly use our utmost endeavors to make punctual payments of the instalments & interest hereafter becoming exigible, and to omit no opportunity of convincing that nation how cordially we wish to serve them. Mutual good offices, mutual affection & similar principles of government seem to destine the two nations for the most intimate communion; and I cannot too much press it on you to improve every opportunity which may occur in the changeable scenes which are passing, and to seize them as they occur, for placing our commerce with that nation & it's dependencies, on the freest & most encouraging footing possibly.

Besides what we have furnished publicly for the

relief of St. Domingo, individual merchants of the U. S. have carried considerable supplies thither, which have been sometimes purchased, sometimes taken by force, & bills given by the administration of the colony on the minister here, which have been protested for want of funds. We have no doubt that justice will be done to these our citizens & that without a delay which would be ruinous to them. We wish authority to be given to the minister of France here to pay the just demands of our citizens out of the monies he may receive from us.

During the fluctuating state of the *Assignats* of France, I must ask the favor of you to inform me in every letter of the rate of exchange between them & coin, this being necessary for the regulation of our custom houses.

Congress closed it's session on the 2d instant. You will see their acts in the newspapers forwarded to you, and the body of them shall be sent as soon as the 8vo. edition is printed. We are to hold a treaty with the Western Indians in the ensuing month of May, but not under very hopeful auspices.

You will perceive by the newspapers a remarkable fall in the price of our public paper. This is owing chiefly to the extraordinary demand for the produce of our country, and a temporary scarcity of cash to purchase it. The merchants holding public paper are obliged to part with it at any price to raise money.

I sent you by the way of London a dozen plans of the city of Washington in the Federal territory, hoping you would have them displayed to public

view where they would be most seen by those descriptions of men worthy & likely to be attracted to it. Paris, Lyons, Rouen, & the sea port towns of Havre, Nantes, Bordeaux & Marseilles would be proper places to send some of them to. I trust to Mr. Taylor to forward you the newspapers by every direct occasion to France. These are rare at all times & especially in the winter; and to send them thro' England would cost too much in postage. To these circumstances as well, probably as to some miscarriages, you must ascribe the length of interval sometimes experienced in the receipt of your papers.—

TO DR. GEORGE GILMER J. MSS.

PHILADELPHIA Mar. 15. 1793.

DEAR DOCTOR,—I duly received your favor of Jan. 26. and learn with great pleasure the re-establishment of your system in which no one takes a more sincere interest than myself. I had indeed hoped by this time to have been with you, but it seems I must stay here a little longer in penance for my sins. This will give you the start in your manufactures of porter & maccaroni, in which however I shall certainly attempt to rival you. You will have heard of the fiscal enquiries into which the late Congress went. I send you a paper containing Madison's speech. Monroe will set out on Monday, and dropping Mrs. Monroe at Fredericksbg will pursue his route to Charlottesville alone. We have no news from France later than the beginning of the King's trial. Notwith-

standing the blustering of John Bull, I still suspect that he never intended war, but only a pretext for arming at home against Tom Paine. An unparalleled want of money here, & stoppage of discount at all the banks, obliges the merchants to slacken the price of wheat & flour: but it is only temporary. Be assured the price will be very high in a short time. Give my best respects to Mrs. Gilmer & accept assurance yourself of the sincere esteem & attachment of Dear Doctor your affectionate friend & servt.

TO THE U. S. MINISTER TO FRANCE J. MSS.

(GOUVERNEUR MORRIS)

PHILADELPHIA Mar 15, 1793.

DEAR SIR,—The President has seen with satisfaction that the Ministers of the U. S. in Europe, while they have avoided an useless commitment of their nation on the subject of the M. de la Fayette have nevertheless shewn themselves attentive to his situation. The interest which the President himself, & our citizens in general take in the welfare of this gentleman is great & sincere, and will entirely justify all prudent efforts to serve him. I am therefore to desire that you will avail yourself of every opportunity of sounding the way towards his liberation, of finding out whether those in whose power he is are very tenacious of him, of insinuating through such channels as you shall think suitable the attentions of the government & people of the U. S. to this object, & the interest they take in it, and of procuring

his liberation by informal solicitations, if possible. But if formal ones be necessary, & the moment should arrive when you shall find that they will be effectual, you are authorized to signify, thro' such channels as you shall find suitable, that our government & nation, faithful in their attachments to this gentleman for the services he has rendered them, feel a lively interest in his welfare, and will view his liberation as a mark of consideration & friendship for the U. S. and as a new motive for esteem & a reciprocation of kind offices towards the power to whom they shall be indebted for this act.

A like letter being written to Mr. Pinckney, you will of course take care, that however you may act thro' different channels, there be still a sufficient degree of concert in your proceedings. I am with great & sincere esteem, &c.

DRAFT OF A LETTER FROM WASHINGTON TO MADAME DE LAFAYETTE [1] D. S. MSS.

PHILA., March 16th. 1793.

DEAR MADAM,—I addressed a few lines to you on the 31st of January, in a state of entire incertainty in what country or condition they might find you, as we had been sometimes told you were in England, sometimes in Holland, & sometimes in France. Your letter of Octob. 8. 1792, first relieved me from doubt, & gave me a hope that, being in France, & on your own estate, you are not as destitute, as I had feared,

[1] See Ford's *Writings of Washington*, XII., 269.

of the resources which that could furnish, but I have still to sympathize with you on the deprivation of the dearest of all your resources of happiness, in comparison with which, others vanish. I do it in all the sincerity of my friendship for him, and with ardent desires for his relief: in which sentiments I know that my fellow-citizens participate. The measures you were pleased to intimate in your letter are perhaps not exactly those which I could pursue, perhaps indeed not the most likely, under actual circumstances, to obtain our object, but be assured that I am not inattentive to his condition, nor contenting myself with inactive wishes for his liberation. My affection to his nation & to himself are unabated, & notwithstanding the line of separation, which has been unfortunately drawn between them, I am confident that both have been led on by a pure love of liberty & a desire to secure public happiness, and I shall deem that among the most consoling moments of my life which should see them reunited in the end, as they were in the beginning of their virtuous enterprise. Accept I pray you the same lively sentiments of interest and attachment to yourself & your dear children, from dear Madam your most obedt. & devoted Servt.

TO THE PRESIDENT OF THE UNITED STATES

J. MSS.

Mar. 21, 93.

Th: Jefferson with his respects to the President incloses him draughts of letters in the Algerine

business. In that to Col° Humphreys he proposes a modification of the former instructions in one point, on a presumption that the President will be disposed to approve it. He will wait on him to-day to know his pleasure, as also to submit to his consideration the question of Mr. Genet's reception in case of his arrival during the absence of the President.

TO THE U. S. MINISTER TO PORTUGAL J. MSS.

(DAVID HUMPHREYS)

PHILADELPHIA Mar. 22. 1793.

DEAR SIR,—I have to acknowledge the receipt of your letters from No. 60 to No. 67, inclusive. You cannot be too vigilant against any such treaty as that mentioned in No. 60, which by giving the exclusive supply of wheat to Naples, would altogether debar the U. S. from it. This would bear so hard on us, that not only an exclusion of their wines from the U. S. ought to be expected on their part, but every other measure which might open to us a market *in any other part of the world*, however Portugal might be affected by it, and I must for ever repeat it that, instead of excluding our *wheat*, we must continue to hope that they will open their ports to our *flour*, and that you will continue to use your efforts, on every good occasion, to obtain this without waiting for a treaty.

As there appears at present a probability of a very general war in Europe, you will be pleased to be particularly attentive to preserve for our vessels all

the rights of neutrality, and to endeavor that our flag be not usurped by others to procure to themselves the benefits of our neutrality. This usurpation tends to commit us with foreign nations, to subject those vessels truly ours to rigorous scrutinies & delays to distinguish them from counterfeits and to take the business of transportation out of our hands.

Continue, if you please, your intelligence relative to the affairs of Spain, from whence we learn nothing but thro' you, to which it will be acceptable that you add any leading events from other countries, as we have several times received important facts thro' you, even from London, sooner than they have come from London directly.

The letters inclosed for Mr. Short & Mr. Carmichael are of very secret nature. If you go by Madrid, you will be the bearer of them yourself; if not, it would be better to retain them than to send them by any conveyance which does not command your entire confidence. I have never yet had a letter from Mr. Carmichael but the one you brought from Madrid. A particular circumstance will occasion forbearance yet a little longer. * * *

DRAFT OF A LETTER TO THE U. S. COMMISSIONERS TO SPAIN[1] J. MSS.

(CARMICHAEL AND SHORT)

Mar. 23. 1793.

GENTLEMEN,—It is intimated to us, in such a way as to attract our attention, that France means to

[1] Endorsed: "to be in cipher."

send a strong force early this spring to offer independance to the Spanish American colonies, beginning with those on the Missisipi, & that she will not object to the receiving those on the East side into our confederation. Interesting considerations require that we should keep ourselves free to act in this case according to circumstances, & consequently that you should not, by any clause of treaty, bind us to guarantee any of the Spanish colonies against their own independance.[1] Nor indeed against any other nation. For when we thought we might guarantee Louisiana on their ceding the Floridas to us, we apprehended it would be seized by Great Britain who would thus completely encircle us with her colonies & fleets. This danger is now removed by the concert between Great Britain & Spain: And the times will soon enough give independance, & consequently free commerce to our neighbors, without our risking the involving ourselves in a war for them.[2]

TO WILLIAM SHORT J. MSS.

PHILADELPHIA Mar. 23. 1793.

DEAR SIR,—My last *private* letter to you was of Jan. 3. Your private letters of Sep. 15. Oct. 22. Nov. 2. Nov. 20. Nov. 30. & Dec. 18. have been re-

[1] Here the following passage is struck out: "But only against all that of Louisiana against those who hold Canada also, & that only in consideration of their ceding the Floridas to us. We are very anxious to hear from you."

[2] At the bottom is written in Washington's writing: "The above meets the approbation of Gº Washington."

ceived & shall be attended. Particular answers cannot be hazarded by this conveyance. But on one circumstance it is so necessary to put you on your guard that I must take and give you the trouble of applying to our cypher.[1] *Be cautious in your letters to the Secretary of the treasury. He sacrificed you* [2] *on a late occasion when called on to explain before the Senate his proceedings relative to the loans in Europe. Instead of extracting such passages of your letters as might relate to them, he gave in the originals in which I am told were strong expressions against the French republicans: and even gave in a correspondence between G. Morris & yourself which scarcely related to the loans at all, merely that a long lre of Morris's might appear in which he argues as a democrat himself against you as an aristocrat. I have done what I could to lessen the injury this did you, for such sentiments towards the French are extremely grating here, tho' they are those of Hamilton himself & the monocrats of his cabal. Particular circumstances have obliged me to remain here a little longer: but I certainly retire in the summer or fall. The next Congress will be strongly republican. Adieu.*

Tell Mr. Carmichael that I have still but one letter from him.[3]

[1] What follows in italic is in cipher in the original.

[2] Here the word "infamously" is struck out.

[3] Jefferson has added in pencil: "See hurry of H^s proceedings under the pressure of Congress to place the defence before the screening power as the answer to this base charge. But it is *characteristic* of its Author."

TO THE SECRETARY OF THE TREASURY[1] MAD. MSS.
(ALEXANDER HAMILTON)

PHILADELPHIA Mar. 27. 1793.

SIR,—In compliance with the desire you expressed, I shall endeavor to give you the view I had of the destination of the loan of three millions of florins obtained by our bankers in Amsterdam previous to the act of the 4th & 12th of Aug. 1790. when it was proposed to adopt it under those acts. I am encouraged to do this by the degree of certainty with which I can do it, happening to possess an official paper whereon I had committed to writing some thoughts on the subject at the time, that is to say, on the 26th of Aug. 1790. The general plan presented to you, according to my comprehension of it, in your Report and Draught of instructions, was 1. To borrow, on proper terms, such a sum of money as might answer all demands for principal & interest of the foreign debt due to the end of 1791. 2. To consider *two* of the three millions of florins already borrowed as is borrowed under the act of Aug. 4. and so far, an execution of the operation before mentioned. 3. To consider the *third million* of florins so borrowed as if borrowed under the act of the 12th of Aug. and so far, an execution of the powers given to the President to borrow two millions of Dollars for the purchase of the public debt. I remember that the million of Dollars surplus of the Domestic revenues appropriated to the purchase of the public debt appeared to me sufficient for that purpose here, for, probably, a considerable time.

[1] See the letter to Madison immediately following this.

I therefore thought if any part of the three millions of florins were to be placed under the act of the 12th of August, that it should rather be employed in purchasing our *foreign paper* at the market of Amsterdam. I had myself observed the different degrees of estimation in which the paper of different countries was held at that market, and wishing that our credit there might always be of the first order, I thought a moderate sum, kept in readiness there to buy up any of our *foreign paper*, whenever it should be offered below par, would keep it constantly to that mark, and thereby establish for us a sound credit where of all places in the world, it would be most important to have it.

The subject however not being within my department, and therefore having no occasion afterwards to pay attention to it, it went out of my mind altogether, till the late enquiries brought it forward again. On reading the President's instructions of Aug. 28. 1790. (two days later than the paper before mentioned) as printed in your Report of Feb. 13, 1793, in the form in which they were ultimately given to you, I observed that he had therein neither confirmed *your* sentiment of employing a part of the money *here*, nor *mine* of doing it *there* in purchases of the public debt; but had directed the application of the whole to the *foreign debt:* & I inferred that he had done this on full and just deliberation, well knowing he would have time enough to weigh the merits of the two opinions before the million of dollars would be exhausted here, or the loans for the foreign debt would over-run their legal measure

there. In this inference however I might be mistaken: but I cannot be in the fact that these instructions gave a sanction to neither opinion. I have thus, Sir, stated to you the view I had of this subject in 1790, & I have done it because you desired it. I did not take it up then as a Volunteer, nor should now have taken the trouble of recurring to it, but at your request; as it is one in which I am not particularly concerned, which I never had either the time or inclination to investigate, & on which my opinion is of no importance. I have the honor to be with respect Sir &c.

TO JAMES MADISON J. MSS.

PHILADE Mar. 31. 1793.

Nothing remarkable this week. What was mentioned in my last respecting Bache's paper was on misinformation, there having been no proposition there. Yours of the 24th from Alexandria is received. I inclose you the rough draught of a letter I wrote on a particular subject on which the person to whom it is addressed desired me to make a statement according to my view of it. He told me his object was perhaps to shew it to some friends whom he wished to satisfy as to the original destination of the 3. mill. of florins, and that he meant to revive this subject. I presume however he will not find my letter to answer his purpose.—The President set out on the 24th. I have got off about one half my superfluous furniture already, and shall get off the other half within two or three days to be shipped to

Virginia: & shall in the course of the week get on the banks of the Schuylkill. Ham. has given up his house in Market street & taken a large one in Arch-street near 6th.

TO ARCHIBALD STUART [1]

PHILADELPHIA Mar. 31. 1793.

DEAR SIR,—I have written you a line this day by Mr. John Nancarrow to recommend him to you as a man of worth and science. What I say therein of him is religiously true, and I recommend him sincerely as a man I esteem, but lest you should be off your guard I mention in this, which goes by post, that I have understood his circumstances here to be bad, so that you must not be led into any money matters on his account. I had avoided saying anything on that subject in my other letter, but apprehensive you might not infer that it was done of design, I have thought it my duty to be more particular in this special letter. I wish Mr. Nancarrow could be persuaded to set up with you some more hopeful business than that of mining. I should imagine his former one of making steel would be gainful.—I take it for granted you receive Freneau's paper from hence regularly, & therefore I write you no news, there being nothing in that way but that the papers mention. I hope to be at home in the summer or autumn, where I shall always be happy to see you.

[1] From the original in the possession of the Virginia Historical Society.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA, April 5, 1793.

SIR,—I take the liberty of inclosing to you the Copy of a Letter, with the papers it refers to, which I have received from Messrs. Brown, Benson & Ives, Merchants of Rhode Island, complaining that their Brig Commerce, commanded by Capt. Munroe with a valuable cargo was forcibly carried into Port au Prince, where not being able to sell the cargo, nor permitted to proceed to any other market, a very considerable Loss was incurred. If their case has been as is therein stated, you will be sensible, Sir, that an Indemnification from the Administration of the Colony will be no more than right, and I hope you will interpose your good offices to procure their attention to it, and that Justice which the complainants shall be found entitled to.

We are thoroughly sensible of the Difficulties of an Administration rigorously exact in the midst of such Troubles as at present distress the Colonies of France; we are willing to make every reasonable allowance for such Difficulties, and disposed to every friendly office in our Power; but we must be permitted to hope that they will prevent in every possible Instance all acts of Irregularity and Force on our Citizens and their property, and where these cannot be avoided, that a just Indemnification will be granted: These being in Truth the most certain means of securing to the Colonies the Supplies of Provision they need and on the best Terms. The merchant must calculate all his risks and be paid for

them. To lessen them therefore, will be to cheapen his supplies.

I will beg the Favor of you to represent to the Colony administration how much on principles both of Friendship and Interest their just patronage of our mutual Commerce is an object of desire with us.

TO THE PRESIDENT OF THE UNITED STATES

D. S. MSS.

PHILADELPHIA Apr. 7. 1793.

SIR,—The accounts of the last week from Lisbon announcing an actual declaration of war by France against England & Holland, when applied to the preceding note of the British court ordering the French Minister to leave London (which is generally considered as preliminary to a declaration of war), now render it extremely probable that those powers are at actual war, and necessary in my opinion that we take every justifiable measure for preserving our neutrality, and at the same time provide those necessaries for war which must be brought across the Atlantic.—The British packet is arrived, but as yet we hear nothing further of the news she brings than that war is declared, & this is only a rumour here as yet. If any letters are come by her for me, they are not yet received.—You will learn by this post that our intelligence from the South as to the Indians is discouraging. We met on Tuesday last on the subject of your circular letter, and agreed on all points, except as to the power of ceding territory,

on which point there remained the same difference of opinion as when the subject was discussed in your presence. We have no further news of Mr. Genest. Mr. Dupont leaves town for France on Wednesday next. By him I shall send my dispatches for Mr. Morris.—Stocks are down @ 17/10. We determined yesterday to lay out the interest fund (about 25,000 Dollars) the only money at our disposal.

TO JAMES MADISON J. MSS.

PHILADELPHIA Apr 7, 1793.

We may now I believe give full credit to the accounts that war is declared between France & England. The latter having ordered Chauvelin to retire within eight days, the former seemed to consider it as too unquestionable an evidence of an intention to go to war, to let the advantage slip of her own readiness, & the unreadiness of England. Hence I presume the first declaration from France. A British packet is arrived, but as yet we learn nothing more than that she confirms the accounts of war being declared. Genest not yet arrived.—An impeachment is ordered here against Nicholson their Comptroller general, by a vote almost unanimous of the house of Representatives. There is little doubt I am told that much *mala fides* will appear: but E. R. thinks he has barricaded himself within the fences of the law. There is a good deal of connection between his manœuvres & the *accommodating* spirit of the Treasury deptmt of the U. S. so as to interest the

impeachors not to spare the latter. Duer now threatens that, if he is not relieved by certain persons, he will lay open to the world such a scene of villiany as will strike it with astonishment.—The papers I *occasionally* inclose you, be so good as to return, as they belong to my office. I move into the country to-morrow or next day. Adieu. Yours affectionately.

TO THOMAS PINCKNEY J. MSS.

PHILADELPHIA Apr. 12. 1793

DEAR SIR,—I have duly received your *private* letter of Feb. 10. and am very sensible of the friendly sentiments you are so good as to express on the event of my retiring. I have for particular reasons, deferred it for some time, but not for a long one. However I am sure you will be secure of a friendly correspondence with my successor, whoever he may be. I think it very certain that a decided majority of the next Congress will be actuated by a very different spirit from that which governed the two preceding Congresses. Public faith will be cherished equally, I would say more, because it will be on purer principles: and the tone & proceedings of the government will be brought back to the true spirit of the constitution, without disorganizing the machine in it's essential parts.—Continue if you please the general address I formerly recommended "to the Secretary of State" &c. I shall thank you most sincerely for the model of the threshing machine, besides replacing the expence of it. The threshing

out our wheat immediately after harvest being the only preservative against the weavil in Virginia, the service you will thereby render that state will make you to them a second Triptolemus. Adieu my dear Sir, & be assured of every sentiment of friendship & respect from Your's affectionately.

TO JAMES LYLE J. MSS.

PHILADELPHIA, Apr. 15, 1793.

DEAR SIR,—According to what I mentioned to you in a former letter, I have had in January past a sale of negroes made for the purpose of paying my bonds to Henderson & co. The amount of the sales returned to me is £700–1–5. besides which there is one other bond not yet taken which will be about £100. so that the whole is about £800. Virginia currency, the one half payable the next christmas, the other half christmas twelvemonth. The ensuing winter I hope to be able to add from another source £200 or a little upwards, so as to compleat the bonds payable 1791. 2. 3. and 4. one half the money receivably this year and the whole by the end of 1796. I expected ere this to have been in Virginia and to have put into your hands myself the bonds for the £700.1.6. but particular circumstances defer my departure till the latter end of summer. In the meantime the bonds are lodged at Monticello.

The last bond to Henderson & co. and my mother's balance will then remain, as I have now cleared myself of Farrell & Jones by bonds in like manner to

within about £100, I shall be more able to manage the last bond to Henderson & my mother's balance: but still I can by no means promise myself to do it by the time stipulated. However when I return to my own country & my own affairs I shall have time to examine into my own resources for doing it. In the mean time I am with sincere esteem Dear your affectionate friend & Servt.

TO THE BRITISH MINISTER J. MSS.

(GEORGE HAMMOND)

PHILADELPHIA, Apr. 18. 1793.

SIR,—I have now the honor to inclose you the answer of the Attorney General to my letter covering yours of Mar 12 on the case of Hooper and Pagan, wherein he has stated the proceedings of Pagan for obtaining a writ of error from the Supreme court of the U. S. for revisal of the judgment of the inferior court pronounced against him; and also his opinion on the merits of the question, had the writ of error been procured, & the merits thereby been brought into question. From this statement you will be able to judge whether Pagan has *bonâ fide* complied with the rule which requires that a foreigner, before he applies for extraordinary interposition, should use his best endeavors to obtain the justice he claims from the ordinary tribunals of the country. You will perceive also that had the writ been pressed for & obtained, & the substantial justice of Pagan's claim thereby brought into discussion, substantial justice would have been against him, according to

the opinion of the Attorney General, according to the uniform decisions of the courts of the U S, even in the case of their own citizens, and according to the decision of this very case in the British provincial court where the evidence was taken & the trial first had. This does not appear then to be one of those cases of gross & palpable wrong ascribable only to wickedness of the heart, & not to error of the head, in the judges who have decided on it, & founding a claim of national satisfaction. At least, that it is so, remains yet to be demonstrated.

The readiness with which the government of the U S. has entered into enquiries concerning the case of Mr. Pagan, even before that case was ripe for their interposition according to ordinary rules, will, I hope, satisfy you, that they would with equal readiness have done for the redress of his case whatever the laws & constitution would have permitted them to do, had it appeared in the result that their courts had been guilty of partiality or other gross wrong against Mr. Pagan. On the contrary, it is hoped, that the marked attentions which have been shewn to him by the government of Massachusets, as well as by that of the U S. have evinced the most scrupulous dispositions to patronize & effectuate his right had right been on his side.

CABINET OPINION ON PROCLAMATION AND FRENCH MINISTER W. MSS.

Apr. 19, 1793.

At a meeting of the heads of departments & the Attorney general at the President's Apr. 19. 1793. by

special summons to consider of several questions previously communicated to them in writing by the President.

Qu. I. Shall a Proclamation issue &c.? (See the questions)

Agreed by all that a Proclamation shall issue, forbidding our citizens to take part in any hostilities on the seas with or against any of the belligerant powers, and warning them against carrying to any such powers any of those articles deemed contraband according to the modern usage of Nations, and enjoining them from all acts and proceedings inconsistent with the duties of a friendly nation towards those at war.

Qu. II. Shall a minister from the Republic of France be received?

Agreed unanimously that he shall be received.

Qu. III. If received, shall it be absolutely, &c.[1]

This & the subsequent questions are postponed to another day.

TO THE U. S. MINISTER TO FRANCE (GOUVERNEUR MORRIS) J. MSS.

PHILADELPHIA, Apr. 20. 1793.

DEAR SIR,— * * * No country perhaps was ever so thoroughly against war as ours. These dispositions pervade every description of its citizens, whether in or out of Office. They cannot perhaps suppress their affections, nor their wishes. But they will

[1] At this point the following is struck out:

"The Attorney general & Secretary of state are of opinion he should be received absolutely & without qualifications.

"The Secretaries of the Treasury & War?"

suppress the effects of them so as to preserve a fair neutrality. Indeed we shall be more useful as neutrals than as parties by the protection which our flag will give to supplies of provision. In this spirit let all your assurances be given to the government with which you reside. I am with great & sincere esteem Dear Sir your most obedt & humble Servt.

TO GEORGE WYTHE J. MSS.

PHILADELPHIA, Apr. 27. 1793.

DEAR SIR,—I received not till yesterday your favor of the 12th Mr. Dorepard was paid the 64. Dollars agreed for, on the delivery of his work. As draughts on Richmond cannot be disposed of here, take any opportunity at your convenience of remitting the sum here. The custom house officers can generally give post-bills of the bank of the U. S. here. But these must not be confounded with branch-bank bills which the bank here will not receive. We understand that a French frigate has taken several English vessels off the capes of Delaware, within two or three days after they had left Philadelphia. We shall be a little embarrassed occasionally till we feel ourselves firmly seated in the saddle of neutrality. I am with great & sincere esteem & respect Dr Sir Your affectionate friend & Servt.

TO THE PRESIDENT OF THE UNITED STATES W. MSS.

PHILADELPHIA Apr. 28. 1793.

SIR,—According to the intimation the other day, and indeed according to my own wish in a question,

if not difficult, yet very important, I have the honor to inclose you a written opinion on the question Whether the U S. ought to declare their treaties with France void, or suspended?

This contains my answer to the 2d. 3d. 4th. 5th. & 6th. of the written queries.

The 1st had been before answered & acted on.

The 7th. 8th. 9th. & 10th. are questions on the Guarantee, which it may possibly never be necessary to answer; or if we should be called on we may then take due time to give in the answer, which must always be framed in a considerable degree on the circumstances existing at that moment.

The 4th. page of the inclosed contains my answer to the 11th.

The 12th. I answer by saying that if the Nation of France shall ever reestablish such an officer as Regent (of which there is no appearance at present) I should be for receiving a Minister from him: but I am not for doing it from any Regent, so christened, and set up by any other authority.

The 13th. has been decided negatively

OPINION ON FRENCH TREATIES W. MSS.

Apr. 28, 1793.

I proceed, in compliance with the requisition of the President, to give an opinion in writing on the general Question, Whether the U S. have a right to renounce their treaties with France, or to hold them suspended till the government of that country shall be established?

In the Consultation at the President's on the 19th inst. the Secretary of the Treasury took the following positions & consequences. "France was a monarchy when we entered into treaties with it: but it has now declared itself a Republic, & is preparing a Republican form of government. As it may issue in a Republic, or a Military despotism, or in something else which may possibly render our alliance with it dangerous to ourselves, we have a right of election to renounce the treaty altogether, or to declare it suspended till their government shall be settled in the form it is ultimately to take; and then we may judge whether we will call the treaties into operation again, or declare them forever null. Having that right of election now, if we receive their minister without any qualifications, it will amount to an act of election to continue the treaties; & if the change they are undergoing should issue in a form which should bring danger on us, we shall not be then free to renounce them. To elect to continue them is equivalent to the making a new treaty at this time in the same form, that is to say, with a clause of guarantee; but to make a treaty with a clause of guarantee, during a war, is a departure from neutrality, and would make us associates in the war. To renounce or suspend the treaties therefore is a necessary act of neutrality."

If I do not subscribe to the soundness of this reasoning, I do most fully to its ingenuity.—I shall now lay down the principles which according to my understanding govern the case.

I consider the people who constitute a society or nation as the source of all authority in that nation,

as free to transact their common concerns by any agents they think proper, to change these agents individually, or the organisation of them in form or function whenever they please: that all the acts done by those agents under the authority of the nation, are the acts of the nation, are obligatory on them, & enure to their use, & can in no wise be annulled or affected by any change in the form of the government, or of the persons administering it. Consequently the Treaties between the U S. and France, were not treaties between the U S. & Louis Capet, but between the two nations of America & France, and the nations remaining in existance, tho' both of them have since changed their forms of government, the treaties are not annulled by these changes.

The Law of nations, by which this question is to be determined, is composed of three branches. 1. The Moral law of our nature. 2. The Usages of nations. 3. Their special Conventions. The first of these only, concerns this question, that is to say the Moral law to which Man has been subjected by his creator, & of which his feelings, or Conscience as it is sometimes called, are the evidence with which his creator has furnished him. The Moral duties which exist between individual and individual in a state of nature, accompany them into a state of society & the aggregate of the duties of all the individuals composing the society constitutes the duties of that society towards any other; so that between society & society the same moral duties exist as did between the individuals composing them while in an unassociated state, their maker

not having released them from those duties on their forming themselves into a nation. Compacts then between nation & nation are obligatory on them by the same moral law which obliges individuals to observe their compacts. There are circumstances however which sometimes excuse the non-performance of contracts between man & man: so are there also between nation & nation. When performance, for instance, becomes *impossible*, non-performance is not immoral. So if performance becomes *self-destructive* to the party, the law of self-preservation overrules the laws of obligation to others. For the reality of these principles I appeal to the true fountains of evidence, the head & heart of every rational & honest man. It is there Nature has written her moral laws, & where every man may read them for himself. He will never read there the permission to annul his obligations for a time, or for ever, whenever they become "dangerous, useless, or disagreeable." Certainly not when merely *useless* or *disagreeable*, as seems to be said in an authority which has been quoted, Vattel. 2. 197, and tho he may under certain degrees of *danger*, yet the danger must be imminent, & the degree great. Of these, it is true, that nations are to be judges for themselves, since no one nation has a right to sit in judgment over another. But the tribunal of our consciences remains, & that also of the opinion of the world. These will revise the sentence we pass in our own case, & as we respect these, we must see that in judging ourselves we have honestly done the part of impartial & vigorous judges.

But Reason, which gives this right of self-liberation from a contract in certain cases, has subjected it to certain just limitations.

I. The danger which absolves us must be great, inevitable & imminent. Is such the character of that now apprehended from our treaties with France? What is that danger. 1. Is it that if their government issues in a military despotism, an alliance with them may taint us with despotic principles? But their government, when we allied ourselves to it, was a perfect despotism, civil & military. yet the treaties were made in that very state of things, & therefore that danger can furnish no just cause. 2. Is it that their government may issue in a republic, and too much strengthen our republican principles? But this is the hope of the great mass of our constituents, & not their dread. They do not look with longing to the happy mean of a limited monarchy. 3. But says the doctrine I am combating, the change the French are undergoing may possibly end in something we know not what, and bring on us danger we know not whence. In short it may end in a Rawhead & bloody-bones in the dark. Very well. Let Rawhead & bloody bones come, & then we shall be justified in making our peace with him, by renouncing our antient friends & his enemies. For observe, it is not the *possibility of danger*, which absolves a party from his contract: for that possibility always exists, & in every case. It existed in the present one at the moment of making the contract. If *possibilities* would avoid contracts, there never could be a valid contract. For possibilities hang over every-

thing. Obligation is not suspended, till the danger is become real, & the moment of it so imminent, that we can no longer avoid decision without forever losing the opportunity to do it. But can a danger which has not yet taken it's shape, which does not yet exist, & never may exist, which cannot therefore be defined, can such a danger I ask, be so imminent that if we fail to pronounce on it in this moment we can never have another opportunity of doing it?

4. The danger apprehended, is it that, the treaties remaining valid, the clause guarantying their West India islands will engage us in the war? But Does the Guarantee engage us to enter into the war in any event?

Are we to enter into it before we are called on by our allies? Have we been called on by them?—shall we ever be called on? Is it their interest to call on us?

Can they call on us before their islands are invaded, or imminently threatened?

If they can save them themselves, have they a right to call on us?

Are we obliged to go to war at once, without trying peaceable negociations with their enemy?

If all these questions be against us, there are still others behind.

Are we in a condition to go to war?

Can we be expected to begin before we are in condition?

Will the islands be lost if we do not save them? Have we the means of saving them?

If we cannot save them are we bound to go to war for a desperate object?

Will not a 10. years forbearance in us to call them into the guarantee of our posts, entitle us to some indulgence?

Many, if not most of these questions offer grounds of doubt whether the clause of guarantee will draw us into the war. Consequently if this be the danger apprehended, it is not yet certain enough to authorize us in sound morality to declare, at this moment, the treaties null.

5. Is the danger apprehended from the 17th article of the treaty of Commerce, which admits French ships of war & privateers to come and go freely, with prizes made on their enemies, while their enemies are not to have the same privilege with prizes made on the French? But Holland & Prussia have approved of this article in our treaty with France, by subscribing to an express Salvo of it in our treaties with them. [Dutch treaty 22. Convention 6. Prussian treaty 19.] And England in her last treaty with France [art. 40] has entered into the same stipulation verbatim, & placed us in her ports on the same footing on which she is in ours, in case of a war of either of us with France. If we are engaged in such a war, England must receive prizes made on us by the French, & exclude those made on the French by us. Nay further, in this very article of her treaty with France, is a salvo of any similar article in any anterior treaty of either party. and ours with France being anterior, this salvo confirms it expressly. Neither of these three powers then have a right to complain of this article in our treaty.

6. Is the danger apprehended from the 22d Art.

of our treaty of commerce, which prohibits the enemies of France from fitting out privateers in our ports, or selling their prizes here. But we are free to refuse the same thing to France, there being no stipulation to the contrary, and we ought to refuse it on principles of fair neutrality.

7. But the reception of a Minister from the Republic of France, without qualifications, it is thought will bring us into danger: because this, it is said, will determine the continuance of the treaty, and take from us the right of self-liberation when at any time hereafter our safety would require us to use it. The reception of the Minister at all (in favor of which Colº Hamilton has given his opinion, tho reluctantly as he confessed) is an acknolegement of the legitimacy of their government: and if the qualifications meditated are to deny that legitimacy, it will be a curious compound which is to admit & deny the same thing. But I deny that the reception of a Minister has any thing to do with the treaties. There is not a word, in either of them, about sending ministers. This has been done between us under the common usage of nations, & can have no effect either to continue or annul the treaties.

But how can any act of election have the effect to continue a treaty which is acknoleged to be going on still? For it was not pretended the treaty was void, but only voidable if we chuse to declare it so. To make it void would require an act of election, but to let it go on requires only that we should do nothing, and doing nothing can hardly be an infraction of peace or neutrality.

But I go further & deny that the most explicit declaration made at this moment that we acknolege the obligation of the treatys could take from us the right of non-compliance at any future time when compliance would involve us in great & inevitable danger.

I conclude then that few of these sources threaten any danger at all; and from none of them is it inevitable: & consequently none of them give us the right at this moment of releasing ourselves from our treaties.

II. A second limitation on our right of releasing ourselves is that we are to do it from so much of the treaties only as is bringing great & inevitable danger on us, & not from the residue, allowing to the other party a right at the same time to determine whether on our non-compliance with that part they will declare the whole void. This right they would have, but we should not. Vattel. 2. 202. The only part of the treaties which can really lead us into danger is the clause of guarantee. That clause is all then we could suspend in any case, and the residue will remain or not at the will of the other party.

III. A third limitation is that where a party from necessity or danger withholds compliance with part of a treaty, it is bound to make compensation where the nature of the case admits & does not dispense with it. 2. Vattel 324. Wolf. 270. 443. If actual circumstances excuse us from entering into the war under the clause of guarantee, it will be a question whether they excuse us from compensation. Our weight in the war admits of an estimate; & that estimate would form the measure of compensation.

If in withholding a compliance with any part of the treaties, we do it without just cause or compensation, we give to France a cause of war, and so become associated in it on the other side. An injured friend is the bitterest of foes, & France had not discovered either timidity, or over-much forbearance on the late occasions. Is this the position we wish to take for our constituents? It is certainly not the one they would take for themselves.

I will proceed now to examine the principal authority which has been relied on for establishing the right of self liberation; because tho' just in part, it would lead us far beyond justice, if taken in all the latitude of which his expressions would admit. Questions of natural right are triable by their conformity with the moral sense & reason of man. Those who write treatises of natural law, can only declare what their own moral sense & reason dictate in the several cases they state. Such of them as happen to have feelings & a reason coincident with those of the wise & honest part of mankind, are respected & quoted as witnesses of what is morally right or wrong in particular cases. Grotius, Puffendorf, Wolf, & Vattel are of this number. Where they agree their authority is strong. But where they differ, & they often differ, we must appeal to our own feelings and reason to decide between them.

The passages in question shall be traced through all these writers, that we may see wherein they concur, & where that concurrence is wanting. It shall be quoted from them in the order in which they wrote, that is to say, from Grotius first, as being the

earliest writer, Puffendorf next, then Wolf, & lastly Vattel as latest in time.

Grotius. 2. 16. 16.

"Hither must be referred the common question, concerning personal & real treaties. If indeed it be with a free people, there can be no doubt but that the engagement is in it's nature real, because the subject is a permanent thing, and even tho the government of the state be changed into a Kingdom, the treaty remains, because the same body remains, tho' the head is changed, and, as we have before said, the government which is exercised by a King, does not cease to be the government of the people. There is an *exception*, when the object seems peculiar to the government as if

Puffendorf. 8. 9. 6.

"It is certain that every alliance made with a republic, is real, & continues consequently to the term agreed on by the treaty, altho' the magistrates who concluded it be dead before, or that the form of government is changed, even from a democracy to a monarchy: for in this case the people does not cease to be the same, and the King, in the case supposed, being established by the consent of the people, who abolished the republican government, is understood to accept the crown with all the engagements which the people conferring it had contracted, as being free & governing

Wolf. 1146.

"The alliance which is made with a free people, or with a popular government, is a real alliance; and as when the form of government changes, the people remains the same, (for it is the association which forms the people, & not the manner of administering the government) this alliance subsists, tho' the form of government changes, *unless*, as is evident, the reason of the alliance was particular to the popular state."

Vattel. 2. 197.

"The same question presents itself in real alliances, & in general on every alliance made with a state, & not in particular with a King for the defense of his person. We ought without doubt to defend our ally against all invasion, against all foreign violence, & even against rebel subjects. We ought in like manner to defend a republic against the enterprises of an oppressor of the public liberty. But we ought to recollect that we are the ally of the state, or of the nation, & not it's judge. If the nation has deposed it's King in form, if the people of a republic has

free cities contract a league for the defence of their freedom."

themselves. There must nevertheless be an *Exception* of the alliances contracted with a view to preserve the present government. As if two Republics league for neutral defence against those who would undertake to invade their liberty: for if one of these two people consent afterwards voluntarily to change the form of their government, the alliance ends of itself, because the reason on which it was founded no longer subsists."

driven away it's magistrates, & have established themselves free, or if they have acknoleged the authority of an usurper, whether expressly or tacitly, to oppose these domestic arrangements, to contest their justice or validity, would be to meddle with the government of the nation, & to do it an injury. The ally remains the ally of the state, notwithstanding the change which has taken place. *But if this change renders the alliance useless, dangerous or disagreeable to it, it is free to renounce it. For it may say with truth, that it would not have allied itself with this nation, if it had been under the present form of it's government.*"

The doctrine then of Grotius, Puffendorf & Wolf is that "treaties remain obligatory notwithstanding

any change in the form of government, except in the single case where the preservation of that form was the object of the treaty." There the treaty extinguishes, not by the election or declaration of the party remaining in statu quo; but independantly of that, by the evanishment of the object. Vattel lays down, in fact, the same doctrine, that treaties continue obligatory, notwithstanding a change of government by the will of the other party, that to oppose that will would be a wrong, & that the ally remains an ally notwithstanding the change. So far he concurs with all the previous writers. But he then adds what they had not said, nor would say "but if this change renders the alliance *useless*, dangerous, or *disagreeable* to it, it is free to renounce it." It was unnecessary for him to have specified the exception of *danger* in this particular case, because that exception exists in all cases & it's extent has been considered. But when he adds that, because a contract is become merely *useless* or *disagreeable*, we are free to renounce it, he is in opposition to Grotius, Puffendorf, & Wolf, who admit no such licence against the obligation of treaties, & he is in opposition to the morality of every honest man, to whom we may safely appeal to decide whether he feels himself free to renounce a contract the moment it becomes merely *useless* or *disagreeable*, to him? We may appeal too to Vattel himself, in those parts of his book where he cannot be misunderstood, & to his known character, as one of the most zealous & constant advocates for the preservation of good faith in all our dealings. Let us hear him on other

occasions; & first where he shews what degree of danger or injury will authorize self-liberation from a treaty. "If simple lezion" (lezion means the loss sustained by selling a thing for less than half value, which degree of loss rendered the sale void by the Roman law), "if simple lezion, says he, or some degree of disadvantage in a treaty does not suffice to render it invalid, it is not so as to inconveniences which would go to the *ruin* of the nation. As every treaty ought to be made by a sufficient power, a treaty pernicious to the state is null, & not at all obligatory; no governor of a nation having power to engage things capable of *destroying* the state, for the safety of which the empire is trusted to him. The nation itself, bound necessarily to whatever it's preservation & safety require, cannot enter into engagements contrary to it's indispensable obligations." Here then we find that the degree of injury or danger which he deems sufficient to liberate us from a treaty, is that which would go to the absolute *ruin* or *destruction* of the state; not simply the lezion of the Roman law, not merely the being disadvantageous or dangerous. For as he says himself § 158. "lezion cannot render a treaty invalid. It is his duty, who enters into engagements, to weigh well all things before he concludes. He may do with his property what he pleases, he may relinquish his rights, renounce his advantages, as he judges proper: the acceptant is not obliged to inform himself of his motives nor to weigh their just value. If we could free ourselves from a compact because we find ourselves injured by it, there would be nothing firm in

the contracts of nations. Civil laws may set limits to lezion, & determine the degree capable of producing a nullity of the contract. But sovereigns acknolege no judge. How establish lezion among them? Who will determine the degree sufficient to invalidate a treaty? The happiness & peace of nations require manifestly that their treaties should not depend on a means of nullity so vague & so dangerous."

Let us hear him again on the general subject of the observance of treaties § 163. "It is demonstrated in natural law that he who promises another confers on him a perfect right to require the thing promised, & that, consequently, not to observe a perfect promise, is to violate the right of another; it is as manifest injustice as to plunder any one of their right. All the tranquillity, the happiness & security of mankind rest on justice, on the obligation to respect the rights of others. The respect of others for our rights of domain & property is the security of our actual possessions; the faith of promises is our security for the things which cannot be delivered or executed on the spot. No more security, no more commerce among men, if they think themselves not obliged to preserve faith, to keep their word. This obligation then is as necessary as it is natural & indubitable, among nations who live together in a state of nature, & who acknolege no superior on earth, to maintain order & peace in their society. Nations & their governors then ought to observe inviolably their promises & their treaties. This great truth, altho' too often neglected in practice, is

generally acknoleged by all nations; the reproach of perfidy is a bitter affront among sovereigns: now he who does not observe a treaty is assuredly perfidious, since he violates his faith. On the contrary nothing is so glorious to a prince & his nation, as the reputation of inviolable fidelity to his word?" Again § 219. "Who will doubt that treaties are of the things sacred among nations? They decide matters the most important. They impose rules on the pretensions of sovereigns: they cause the rights of nations to be acknoleged, they assure their most precious interests. Among political bodies, sovereigns, who acknolege no superior on earth, treaties are the only means of adjusting their different pretensions, of establishing a rule, to know on what to count, on what to depend. But treaties are but vain words if nations do not consider them as respectable engagements, as rules, inviolable for sovereigns, & sacred through the whole earth. § 220. The faith of treaties, that firm & sincere will, that invariable constancy in fulfilling engagements, of which a declaration is made in a treaty, is there holy & sacred, among nations, whose safety & repose it ensures; & if nations will not be wanting to themselves, they will load with infamy whoever violates his faith."

After evidence so copious & explicit of the respect of this author for the sanctity of treaties, we should hardly have expected that his authority would have been resorted to for a wanton invalidation of them whenever they should become merely *useless* or *disagreeable*. We should hardly have expected that,

rejecting all the rest of his book, this scrap would have been culled, & made the hook whereon to hang such a chain of immoral consequences. Had the passage accidentally met our eye, we should have imagined it had fallen from the author's pen under some momentary view, not sufficiently developed to found a conjecture what he meant: and we may certainly affirm that a fragment like this cannot weigh against the authority of all other writers, against the uniform & systematic doctrine of every work from which it is torn, against the moral feelings & the reason of all honest men. If the terms of the fragment are not misunderstood, they are in full contradiction to all the written & unwritten evidences of morality: if they are misunderstood, they are no longer a foundation for the doctrines which have been built on them.

But even had this doctrine been as true as it is manifestly false, it would have been asked, to whom is it that the treaties with France have become *disagreeable?* How will it be proved that they are *useless?*

The conclusion of the sentence suggests a reflection too strong to be suppressed "for the party may say with truth that it would not have allied itself with this nation, if it had been under the present form of it's government." The Republic of the U. S. allied itself with France when under a despotic government. She changes her government, declares it shall be a Republic, prepares a form of Republic extremely free, and in the mean time is governing herself as such, and it is proposed that America shall

declare the treaties void because "it may say with truth that it would not have allied itself with that nation, if it had been under the present form of it's government!" Who is the American who can say with truth that he would not have allied himself to France if she had been a republic? or that a Republic of any form would be as *disagreeable* as her antient despotism?

Upon the whole I conclude

That the treaties are still binding, notwithstanding the change of government in France: that no part of them, but the clause of guarantee, holds up *danger*, even at a distance.

And consequently that a liberation from no other part could be proposed in any case: that if that clause may ever bring *danger*, it is neither extreme, nor imminent, nor even probable: that the authority for renouncing a treaty, when *useless* or *disagreeable*, is either misunderstood, or in opposition to itself, to all their writers, & to every moral fleeing: that were it not so, these treaties are in fact neither useless nor disagreeable.

That the receiving a Minister from France at this time is an act of no significance with respect to the treaties, amounting neither to an admission nor a denial of them, forasmuch as he comes not under any stipulation in them:

That were it an explicit admission, or were an express declaration of this obligation now to be made, it would not take from us that right which exists at all times of liberating ourselves when an adherence to the treaties would be *ruinous* or *destructive* to the

society: and that the not renouncing the treaties now is so far from being a breach of neutrality, that the doing it would be the breach, by giving just cause of war to France.

TO JAMES MADISON J. MSS.

PHILADELPHIA Apr. 28, 1793.

DEAR SIR,—Yours of the 12th inst is received and I will duly attend to your commission relative to the ploughs. We have had such constant deluges of rain & bad weather for some time past that I have not yet been able to go to Dr. Logan's to make the enquiries you desire, but I will do it soon. We expect Mr. Genest here within a few days. It seems as if his arrival would furnish occasion for the *people* to testify their affections without respect to the cold caution of their government. Would you suppose it possible that it should have been seriously proposed to declare our treaties with France void on the authority of an ill understood scrap in Vattel 2. § 192 toutefois et cest argument &c. [*illegible*] and that it should be necessary to discuss it? Cases are now arising which will embarrass us a little till the line of neutrality be firmly understood by ourselves & the belligerant parties. A French frigate is now bringing here, as we are told, prizes which left this port 2 or 3 days before. Shall we permit her to sell them? The treaty does not say we shall, and it says we shall not permit the like to England? Shall we permit France to fit out privateers here? The treaty does

not stipulate that we shall tho' it says we shall not permit the English to do it. I fear that a fair neutrality will prove a disagreeable pill to our friends, tho' necessary to keep out of the calamities of a war. Adieu.

TO THE FRENCH MINISTER[1] J. MSS

(JEAN BAPTISTE TERNANT)

PHILADELPHIA April 30, 1793.

SIR,—Your letter of the 13th instant, asking monies to answer the expenses and Salaries of the Consular Offices of France, has been duly laid before the President, and his directions thereon taken.

I have, in consequence, to observe to you that before the new Government of France had time to attend to things on this side the Atlantic, and to provide a deposit of money for their purposes here, there appeared a degree of necessity that we, as the

[1] A first draft of this paper was as follows:

"Substance of the Answer proposed to the Letter of the French Minister, of April 13.

"April 18th, 1793.

"Before the new government of France had time to attend to the things on this side of the Atlantic, and to provide a deposit of money for their purposes here, there was a necessity that we, as their friends and debtors, should keep their affairs from suffering, by furnishing money for urgent purposes. This obliged us to take on ourselves to judge of the purpose, because, on the soundness of that, we were to depend for our justification; hence we furnished moneys for their colonies and their agents here—justified, in our own opinion, by the importance and necessity of the case. But that necessity is now at an end. The government has established a deposit of money in the hands of their minister here. We have nothing now to do but furnish the money, for which the order is our direction. We are no longer to look into the purposes to which it is to be applied. Their

friends and debtors of the Nation, should keep their affairs from suffering, by furnishing money for urgent purposes. This obliged us to take on ourselves to judge of the purpose, because on the soundness of that we were to depend for our justification. Hence we furnished monies for their Colonies and their Agents here, without express authority, judging from the importance and necessity of the case, that they would approve of our interference.

But this kind of necessity is now at an end: the government has established a deposit of money in the hands of their minister here, and we have nothing now to do, but to furnish the money, which we are in the course of doing, without looking into the purposes to which it is to be applied. Their minister is to be the judge of these, and to pay it to whom, and for what he pleases.

If it be urged that they have appropriated all the

minister is to be judge of these, and to pay the money to whom and for what he pleases.

"If it be urged that they have appropriated all the money we are advancing to another object; that he is not authorized to divert any of it to any other purpose, and therefore needs a further sum; it may be answered, that it will not lessen the stretch of authority to add an unauthorized payment by us, to an unauthorized application by him; and that it seems fitter that he should exercise a discretion over their appropriations, standing as he does in a place of confidence, authority, and responsibility, than we who are strangers and unamenable to them. Private reasons of weight, which need not be expressed to the minister, that these applications make us, in some sort, a board of auditors for French accounts, and subject our payments to question.

"That it is known to us, that the present minister, not having the confidence of his government, is replaced by another, and consequently the authority of his application is lessened. That it is rather probable the whole establishment of their consuls here will be suppressed, as useless and expensive to them, and rather vexatious to us."

money we are furnishing to other objects, that you are not authorized to divert any of it to any other purpose, and therefore that you *need a further sum;* it may be answered that it will not lessen the stretch of authority to add an *unauthorized payment by us* to an *unauthorized application* by you, and that it seems fitter that their minister should exercise a discretion over their appropriations, standing, as he does, in a place of confidence, authority, and responsibility, than we who are strangers, and unamenable to them. It is a respect we owe to their authority to leave to those acting under that, the transaction of their affairs, without an intermeddling on our part which might justly appear officious.

In this point of light I hope you will view our conduct, and that the Consular Officers will be sensible that in referring them to your care, under which the national authority has placed them, we do but conform ourselves to that authority.

I have the honor to be with sentiments of great respect and esteem, Sir Your most obedient, and most humble Servant.

TO THE SECRETARY OF THE TREASURY [1]

(ALEXANDER HAMILTON)

PHILADELPHIA May 1, 1793.

SIR,—When you mentioned to me yesterday that M. de Ternant proposed to apply for a sum of money, & founded himself on a letter of mine which gave him

[1] See Hamilton's *Works of Hamilton*, IV., 391.

reason to expect it, I thought I could not have written such a letter, because I did not recollect it, & because it was out of the plan which you know had been adopted that when we furnished one sum of money we should avoid promising another. I have now most carefully examined all my letters to M. de Ternant, as far back as Mar. 7, 1792, the date of the first on the subject of furnishing money, & can assure you there is not a word, in one of them, which can be construed into a promise, express or implied, relative to the present subject, or which can have committed the government in the smallest degree to a departure from the rules it has laid down. I am equally confident that I have never said a word which could do it. Upon the ground therefore of any such commitment by me, the proposition will not be supported.

With respect to these applications in general, they were of course to pass through me: but I have considered them as depending too much on the arrangements of your department to permit myself to take & be tenacious of any particular ground, other than that whatever rule we adopt, it be plain & persevered in uniformly in all cases where the material circumstances are the same, so that we never refuse to one what has been done for another. It is, & ever has been my opinion & wish that we should gratify the diplomatic gentlemen in every way in which we can do it, without too great inconvenience or commitment of our own government. I think it our interest to do so; and am under this impression in the present case so much that I should

readily concur, if it be the pleasure of the President, in reconsidering the rule adopted on a late occasion, & substituting any other consistent with our public duties, more adapted to the gratification of the diplomatic gentlemen, & uniformly to be applied where the material circumstances shall be the same; for it would reverse our aim were we to put ourselves in the case of disobliging one by refusing what we have done to gratify another. In these sentiments, I will hand to the President any application which M. de Ternant shall think proper to communicate to me in writing.

I have the honor to be with great respect, Sir, Your most obed't humble serv't.

TO THE BRITISH MINISTER J. MSS.

(GEORGE HAMMOND)

PHILADELPHIA, May 3, 1793.

SIR,—I received yesterday the representation and requisition which you were pleased to make on the capture of the British ship *Grange* by the French frigate *l'Embuscade* within the bay of Delaware, and immediately laid it before the President. The U. S. being at peace with both parties, will certainly not see with indifference it's territory or jurisdiction violated by either, and will proceed immediately to enquire into the facts and to do what these shall shew ought to be done with exact impartiality.

The recollection of evidence may require some small time, but measures are taken to keep things in the meantime in their present state.

TO THE FRENCH MINISTER (JEAN BAPTISTE TERNANT) J. MSS.

PHILADELPHIA May 3. 1793.

SIR,—The Minister Plenipotentiary of his Britannic Majesty has represented to the government of the U. S. that on the 25th of April last the British ship *Grange*, while lying at anchor in the bay of Delaware, within the territory & jurisdiction of the U. S., was taken possession of by the *Embuscade*, a frigate of the French republic, has been brought to this port where she is now detained as prize & the crew as prisoners, and has made a requisition in form for a restoration of the vessel & liberation of the crew. I have the honor to furnish you with copies of the evidence given in by the British minister, and to observe that the U. S. being at peace with all parties cannot see with indifference it's territory or jurisdiction violated by either; that the government will therefore proceed to enquire into the facts, and for that purpose will receive with pleasure & consider with impartiality any evidence you will be pleased to have them furnished with on the subject: and the President hopes that you will take effectual measures for detaining here the vessel taken, her crew & cargo, to abide the decision which will be made thereon, & which is desired to be without delay.

TO JAMES MADISON J. MSS.

May 5. 93.

No letter from you since that of Apr. 12.—I received one from Mr. Pinckney yesterday informing

me he expected to send me by the next ship a model of the Threshing mill. He had been to see one work, which with 2. horses got out 8. bushels of *wheat* an hour. But he was assured that the mill from which my model was taken gets out 8 quarters (i. e. 64 bushels) of *oats* an hour with 4. horses. I have seen Dr. Logan. Your ploughs will be done in a week & shall be attended to.—Seal & forward Monroe's letter after reading it. Adieu. Yours affectly.

P. S.—I inclose a Boston paper as a proof of what I mention to Monroe of the spirit which is rising. The old tories have their names now raked up again; & I believe if the author of *Plain truth* was now to be charged with that pamphlet, this put along side of his present Anglomany would decide the voice of the yeomanry of the country on his subject.

TO JAMES MONROE MON. MSS.

PHILADELPHIA May 5, 1793.

DEAR SIR,—The expectation that you are always from home prevents my writing to you with regularity; a matter of little consequence to you, as you probably receive Freneau's paper regularly, & consequently all the news of any importance.—The fiscal party having tricked the house of representatives out of the negative vote they obtained, seem determined not to lose the ground they gained by entering the lists again on matters of fact & reason. They therefore preserve a triumphant silence notwithstanding the attacks of the pamphlet entitled

"an examination &c" and of Timon. They shew their wisdom in this if not their honesty. The war between France & England seems to be producing an effect not contemplated. All the old spirit of 1776. is rekindling. The newspapers from Boston to Charleston prove this; & even the Monocrat papers are obliged to publish the most furious Philippics against England. A French frigate took a British prize off the capes of Delaware the other day, & sent her up here. Upon her coming into sight thousands & thousands of the *yeomanry* of the city crowded & covered the wharves. Never before was such a crowd seen there, and when the British colours were seen *reversed*, & the French flying above them they burst into peals of exultation. I wish we may be able to repress the spirit of the people within the limits of a fair neutrality.—In the meantime H. is panic-struck if we refuse our breach to every kick which Gr Brit. may chuse to give it. He is for proclaiming at once the most abject principles, such as would invite & merit habitual insults. And indeed every inch of ground must be fought in our councils to desperation in order to hold up the face of even a sneaking neutrality, for our votes are generally 2½ against 1½. Some propositions have come from him which would astonish Mr. Pitt himself with their boldness. If we preserve even a sneaking neutrality, we shall be indebted for it to the President, & not to his counsellors.—Immense bankruptcies have taken place in England. The last advices made them amount to 11. millions sterling, & still going on. Of the houses connected with America they have fallen

only on those who had dealt in American paper. The beginning of the business was from the alarm occasioned by the war, which induced cautious people to withdraw their money from the country banks. This induced the bank of England to stop discounting, which brought on a general crash, which was still going on. It is said that 2. millions of manufacturers &c would be put out of employ by these failures. This is probably exaggerated.—The stocks are very low here now, and an immense mass of paper is expected to be returned immediately from England, so that they will be still lower. Notwithstanding this, the sinking fund is idle, not having had a shilling to lay out (except the interest of the part sunk).—You will see in Freneau's next paper a most advantageous decree of the French National assembly in our favor. They have lately sustained some severe checks. The papers will confuse you on the subject. The truth is that in a combination of three operations Clairfayt killed & wounded 1400, took 600. Saxe Cobourg killed & wounded 4000, & took 1600. Brunswick killed & wounded 1300, & took 700. This is the sum. Their defeats are as sensibly felt at Philadelphia as at Paris, and I foresee we are to have a trying campaign of it. Great Br has as yet not condescended to notice us in any way. No wish expressed of our neutrality, no answer of any kind to a single complaint for the daily violations committed on our sailors & ships. Indeed we promise beforehand so fast that she has not time to ask anything. —We expect Genest daily. When Ternant received certain account of his appointment thinking he had

nothing further to hope from the Jacobins, he that very day found out something to be offended at in me (in which I had been made *ex officio* the ostensible agent in what came from another quarter, & he has never been undeceived) attached himself intimately to Hamilton, put on mourning for the king, & became a perfect Counter-revolutioner. A few days ago he received a letter from Genest giving him a hope that they will employ him in the army. On this he tacked about again, became a Jacobin, & refused to present the Viscount Noailles & some French aristocrats arrived here. However he will hardly have the impudence to speak to me again. From what I learn from Noailles, la Fayette has been more imprudent than I expected, but certainly innocent.

Present my best affections to Mrs. Monroe & accept them for yourself also. Yours sincerely.

TO THOMAS MANN RANDOLPH J. MSS.

PHILADELPHIA, May 6, 1793.

DEAR SIR,—The inclosed papers will inform you of some checks the French have lately received. They are confounded & multiplied in the paper. The truth is that a combined operation in three different parts took place the first days of March under Clairfayt, Saxe Cobourg, and Brunswick, every one of which succeeded. The first killed & wounded 1400, & took 600. The second killed & wounded 4000, & took 1600. The third killed & wounded 1300, & took 700. In consequence of these the French lost

Seige & raised the seige of *Maestricht.*—A French frigate has brought 2 prizes up to Philadelphia. The *yeomanry* of the City (not the fashionable people nor paper men) showed prodigious joy when, flocking to the wharves, they saw the British colors reversed & the French flying above them.—I very much fear that France will experience a famine this summer. The effects of this admit of no calculation.—Grain is the thing for us now to cultivate. The demand will be immense, & the price high. I think cases were shown us that to sell it before the spring is an immense sacrifice. I fear we shall experience a want of vessels to carry our produce to Europe. In this case the tobacco will be left, because bread is more essential to them.

Mr. Beverly Randolph left this a few days ago in pretty good health. Maria I think is getting into better health.

I hope you are all well, tho' having no letter later than the 28th of March we are uneasy. My love to my dear Martha & am Dear Sir sincerely and affectionately yours.

TO THE U. S. MINISTER TO GREAT BRITAIN

(THOMAS PINCKNEY) J. MSS.

PHILADELPHIA May 7, 1793.

DEAR SIR,—Since my Letter of April 16th. yours have been received of March 12, 12, 13, 13, and 19. Before the receipt of these, one of which covered the form of your passports, it had been determined here that passports should be issued in *our own ports* only,

as well to secure us against those collusions which would be fraudulent towards our Friends, and would introduce a competition injurious to our own vessels, as to induce these to remain in our own service, and thereby give to the productions of our Soil, the protection of it's own flag in it's passage to foreign markets. As our Citizens are free to purchase and use *foreign-built* vessels, and these, like all their other lawful property, are entitled to the protection of their Government, passports will be issued to them as freely as to *home-built* Vessels. This is strictly within our Treaties, the letter of which as well as their spirit, authorizes passports to all vessels *belonging* to Citizens of the United States. Our laws indeed, indulge home-built vessels with the payment of a lower Tonnage, and to evidence their right to this, permit them alone to take out registers from our own offices; but they do not exclude foreign-built vessels owned by our Citizens from any other right. As our home-built vessels are adequate to but a small proportion of our Transportation, if we could not suddenly augment the stock of our Shipping, our produce would be subject to war insurance in the vessels of the belligerent powers, though we remain at peace ourselves.

In one of your letters of March 13th. you express your apprehension that some of the belligerent powers may stop our vessels going with grain to the Ports of their Enemies, and ask instructions which may meet the Question in various points of view, intending, however, in the meantime to contend for the amplest freedom of neutral nations. Your

intention in this, is perfectly proper, and coincides with the Ideas of our own Government in the particular case you put, as in general cases. Such a stoppage to an unblockaded port would be so unequivocal an infringement of the neutral rights, that we cannot conceive it will be attempted. With respect to our conduct as a neutral nation, it is marked out in our Treaties with France and Holland, two of the belligerent Powers: and as the duties of neutrality require an *equal* conduct to both parties, we should, on that ground, act on the same principles towards Great Britain. We presume that this would be satisfactory to her, because of it's equality, and because she too, has sanctioned the same principles in her Treaty with France. Even our 17th Article with France, which might be disagreeable, as from it's nature it is unequal, is adopted exactly by Great Britain in her 40th Article with the same power, and would have laid her, in a like case, under the same unequal obligations against us. We wish then that it could be arranged with Great Britain, that our Treaties with France & Holland, and that of France & Great Britain (which agree in what respects neutral nations) should form the line of conduct for us all, in the present war, in the cases for which they provide. Where they are silent, the general principles of the law of nations, must give the rule. I mean the principles of that law as they have been liberalized in latter times by the refinement of manners & morals, and evidenced by the Declarations, Stipulations, and Practice of every civilized Nation. In our Treaty with Prussia,

indeed, we have gone ahead of other Nations in doing away restraints on the commerce of peaceful nations, by declaring that nothing shall be contraband, for, in truth, in the present improved State of the arts when every country has such ample means of procuring arms within and without itself, the regulations of contraband answer no other end than to draw other nations into the war. However, as nations have not given sanction to this improvement, we claim it, at present, with Prussia alone.

You are desired to persevere till you obtain a regulation to guard our Vessels from having their Hands impressed, and to inhibit the British navy-officers from taking them under the pretext of their being British subjects. There appears but one practicable rule, that the vessel being American, shall be conclusive Evidence that the Hands are so, to a certain number, proportioned to her tonnage. Not more than one or two Officers shall be permitted to visit a vessel.—Mr. Albion Coxe has just arrived.

TO THE ATTORNEY GENERAL J. MSS.

(EDMUND RANDOLPH)

May 8. 1793.

I have been still reflecting on the draught of the letter from the Secretary of the Treasury to the Custom house officers, instructing them to be on the watch as to all infractions or tendencies to infraction of the laws of neutrality by our citizens & to communicate the same to him. When this paper was first communicated to me, tho' the whole of it struck

me disagreeably, I did not in the first moment see clearly the improprieties but of the last clause. The more I have reflected, the more objectionable the whole appears.

By this proposal the Collectors of the customs are to be made an established corps of spies or informers against their fellow citizens, whose actions they are to watch in secret, inform against in secret to the Secretary of the Treasury, who is to communicate it to the President. If the action and evidence appear to justify a prosecution, a prosecution is to be set on foot on the *secret information of a collector*. If it will not justify it, then the only consequence is that the mind of government has been poisoned against a citizen, neither knowing nor suspecting it, & perhaps too distant to bring forward his justification. This will at least furnish the collector with a convenient weapon to keep down a rival, draw a cloud over an inconvenient censor, or satisfy mere malice & private enmity.

The object of this new institution is to be to prevent infractions of the laws of neutrality, & preserve our peace with foreign nations. Acts involving war, or proceedings which respect foreign nations, seem to belong either to the department of war, or to that which is charged with the affairs of foreign nations. But I cannot possibly conceive how the superintendance of the laws of neutrality, or the preservation of our peace with foreign nations can be ascribed to the department of the treasury, which I suppose to comprehend merely matters of revenue. It would be to add a new & a large field to a department

already amply provided with business, patronage, & influence.—It was urged as a reason, that the collectors of the customs are in convenient positions for this espionage. They are in convenient positions too for building ships of war: but will that business be transplanted from it's department, merely because it can be conveniently done in another?

It seemed the desire that if this means was disapproved, some other equivalent might be adopted.—Tho we consider the acts of a foreigner making a capture within our limit, as an act of public hostility, & therefore to be turned over to the military, rather than the civil power; yet the acts of our own citizens infringing the laws of neutrality, or contemplating that, are offences against the ordinary laws and cognisable by them. Grand juries are the constitutional inquisitors & informers of the country, they are scattered everywhere, see everything, see it while they suppose themselves mere private persons, and not with the prejudiced eye of a permanent & systematic spy. Their information is on *oath*, is public, it is in the vicinage of the party charged, & can be at once refuted. These officers taken only occasionally from among the people, are familiar to them, the office respected, & the experience of centuries has shewn that it is safely entrusted with our character, property & liberty. A grand juror cannot carry on systematic persecution against a neighbor whom he hates, because he is not permanent in the office.—The Judges generally, by a charge, instruct the Grand jurors in the infractions of law which are to be noticed by them; & our judges are in the habit

of printing their charges in the newspapers. The Judges having notice of the proclamation, will perceive that the occurrence of a foreign war has brought into activity the laws of neutrality, as a part of the law of the land. This new branch of the law they will know needs explanation to the grand juries more than any other. They will study & define the subjects to them & to the public. The public mind will by this be warned against the acts which may endanger our peace, foreign nations will see a much more respectable evidence of our *bonâ fide* intentions to preserve neutrality, and society will be relieved from the inquietude which must forever be excited by the knowledge of the existence of such a poison in it as secret accusation. It will be easy to suggest this matter to the attention of the judges, & that alone puts the whole machine into motion. The one is a familiar, impartial & precious instrument, the other, not popular in it's present functions, will be odious in the new ones, and the odium will reach the Executive who will be considered as having planted a germ of private inquisition absolutely unknown to our laws.—I am not quite certain what was considered as agreed upon yesterday, it cannot be too late however to suggest the substitution of the Judges and grand-jurors in place of the collectors of the customs.

P. S. I understood Colº H. yesterday that he should confer with the President on the subject of our deliberation. As that is not exactly the channel thro' which I would wish my objections to be represented, should the President mention the subject to

you I will thank you to communicate to him this note, or it's substance.

TO THE SECRETARY OF THE TREASURY J. MSS.

(ALEXANDER HAMILTON)

PHILADELPHIA May 8, 1793.

SIR,—I had wished to have kept back the issuing passports for sea vessels till the question should be decided whether the treaty with France should be declared void, lest the issuing the Passport prescribed by that treaty might be considered as prejudging the question. The importunities however of the owners obliging me to give out a few, I had them printed in the Dutch form only. Not then having sufficiently considered on the best mode of distributing them, I took the liberty, as an expedient of the moment of sending 7 (the number of vessels then waiting in this port) to Mr. Delaney, asking the favor of him to fill them up & deliver them for me. Application for another parcel coming, and the applicant not being able to wait himself till I could send them to be signed by the President, he desired I would lodge them with Mr. Coxe on whom it would be convenient for him to call for them. I did so; & afterwards sent a second parcel of a dozen, which were pressingly requested.

The President having now decided that the French passport may also be issued, it is at this time in the press, & the whole instrument compleat with the two passports, sea-letters, & certificates in its final

form, will be ready for signature to-morrow. It has therefore now become necessary to determine on the ultimate channel of distributing them. I am not the judge whether the task of distribution might interfere too much with the other duties of the collectors of the customs. If it would not, their position seems best accommodated to that distribution. I took the liberty therefore to-day of proposing to the President that, if you should think there would be no inconvenience in charging them with the distribution, the blanks might be lodged with them; of which he approved: and I have now the honor of submitting that question to you. If you find no inconvenience in it, I will send 500 blanks, as soon as they shall be signed, either to your office or to that of the Commissioner of the revenue, whichever you shall prefer, to be forwarded to the collectors of the different ports; & from time to time afterwards will keep up a supply. Should it however, in your opinion, interfere too much with the other duties of those officers, I will submit to the President the depositing them with the deputy marshals appointed or to be appointed in every port. I will ask the favor of your answer, as the applications are numerous & pressing, & I am unwilling to be further troublesome to the gentlemen who have hitherto been so kind as to fill up & deliver them for me till some arrangement would be made which might relieve me personally from a business with the details of which I was not acquainted. I have the honor to be with great respect, Sir, Your most obed't & most humble serv't.

TO DR. ENOCH EDWARDS J. MSS.

PHILADELPHIA May 8, 1793.

SIR,—It was under the idea that you meant to go to England only that I gave you a letter only to that country. I have now the honor to inclose you one for Mr. Morris & another for Mr. Brissot. The former is a letter of mere general introduction, because you will find Mr. Morris living in the country out some distance from Paris, & consequently not in the way of being much seen by you. The letter to Mr. Brissot is more particular. I have addressed you to him because he speaks English well, knows this country, loves it and is a true disciple of liberty. I have taken the liberty of referring him to you for a true state of republicanism here, as for the characters, objects, numbers & force of our parties. It is really interesting that these should be well understood in France, & particularly by their government. Particular circumstances have generated suspicions among them that we are swerving from our republicanism. No body is more capable of being set to rights on this subject or more disposed to be so than Mr. Brissot. I hope therefore you will take some pains to make him master of the state of things, persons & principles here, that he may explain them to others, and understand the train of our proceedings hereafter. Do not be detained in London for your personal safety in France. You will be as safe there as here.

TO JEAN PIERRE BRISSOT DE WARVILLE J. MSS.

PHILADELPHIA, May 8, 1793.

DEAR SIR,—The bearer hereof, Doctor Edwards, a citizen of the United. Sta. proposing to visit Paris, I avail myself of that occasion to recall myself to your recollection, and to recommend to your notice a person whose information & worth will merit it. As the cause of freedom in one event is dear to the free of every other, and your partialities for our States may still interest you in their situation, he will be able to give you the true state of republicanism with us, which I apprehend to be imperfectly known to you. We too have our aristocrats and monocrats, and as they float on the surface, they shew much, though they weigh little. For their more particular description, as well as that of our real republicans, I refer you to him, as perfectly able to give it, with the weight & numbers of each description. I am happy in a safe occasion of answering you that I continue eternally attached to the principles of your revolution. I hope it will end in the establishment of some firm government, friendly to liberty, & capable of maintaining it. If it does, the world will become inevitably free. If it does not, I feel that the zealous apostles of English despotism here, will increase the number of its disciples. However, we shall still remain free. Tho' they may harrass our spirits, they cannot make impression on our center.—A germ of corruption indeed has been transferred from our dear mother country, & has already borne fruit, but its blight is begun from the breath of the people.—Adieu, my dear sir, and accept assurances of sincere

confraternity with your citizens, and affection & respect from your cordial friend & servant.

TO JAMES MADISON MAD. MSS.

12 May 1793.

I wrote you on the 5th, covering an open letter to Col. Monroe. Since that I have received yours of Apr. 29.—We are going on here in the same spirit still. The Anglophobia has seized violently on three members of our council. This sets almost every day on questions of neutrality. H. produced the other day the draught of a letter by himself to the Collectors of the Customs, giving them in charge to watch over all proceedings in their districts contrary to the laws of neutrality or tending to infract our peace with the belligerent powers, and particularly to observe if vessels pierced for guns should be built, and to inform *him* of it. This was objected to, 1. As setting up a system of espionage destructive of the peace of society. 2. Transferring to the Treasury departmt. the conservation of the laws of neutrality and our peace with foreign nations. 3. It was rather proposed to intimate to the judges that the laws respecting neutrality being now come into activity, they should charge the grand juries with the observance of them; these being constitutional & public informers, & the persons accused *knowing* of what they should do, & having an opportunity of justifying themselves. E. R. found out a hair to split, which, as always happens, became the decision. H. is to

write to the collectors of the customs, who are to convey their information to the Attorneys of the district, to whom E. R. is to write to receive their information & proceed by indictment. The clause respecting the building vessels pierced for guns was omitted, for tho' 3. against 1. thought it would be a breach of neutrality, yet they thought we might defer giving a public opinion on it as yet. Everything, my dear sir, now hangs on the opinion of a single person, and that the most indecisive one I ever had to do business with. He always contrives to agree in principle with one but in conclusion with the other. Anglophobia, secret Antigallomany, a *federalisme outrée*, and a present ease in his circumstances not natural, have decided the complexion of our dispositions, and our proceedings towards the Conspirators against human liberty & the Assertors of it, which is unjustifiable in principle, in interest, and in respect to the wishes of our constituents. A manly neutrality, claiming the liberal rights accribed to that condition by the very powers at war, was the part we should have taken, & would I believe have given satisfaction to our allies. If anything prevents it's being a mere English neutrality, it will be that the penchant of the P. is not that way, and above all, the ardent spirit of our constituents. The line is now drawing so clearly as to shew on one side 1. the fashionable circles of Phila, N. York, Boston & Charleston (natural aristocrats), 2. merchants trading on British capitals, 3. paper men, (all the old tories are found in some one of these three descriptions). On the other side are 1. merchants trading

on their own capitals, 2. Irish merchants, 3. tradesmen, mechanics, farmers, & every other possible description of our citizens.—Genest is not yet arrived tho' hourly expected.—I have just heard that the workmen I had desired from Europe were engaged & about to embark. Another strong motive for making me uneasy here. Adieu my dear Sir.

TO THE BRITISH MINISTER J. MSS.

(GEORGE HAMMOND)

PHILADELPHIA May 15, 1793.

SIR,—Your several memorials of the 8th instant have been laid before the President, as had been that of the 2d, as soon as received. They have been considered with all the attention and the impartiality which a firm determination could inspire to do what is equal and right between all the belligerent powers.

In one of these, you communicate on the information of the british consul at Charleston, that the Consul of France, at the same place, had condemned, as legal prize, a british vessel, captured by a french Frigate, and you justly add, that this judicial act is not warranted by the usage of nations, nor by the stipulations existing between the United States and France. I observe further, that it is not warranted by any law of the Land. It is consequently a mere nullity, as such it can be respected in no Court, can make no part in the title of the Vessel, nor give to the purchaser any other security than what he would have had without it. In short, it is so absolutely

nothing as to give no foundation of just concern to any person interested in the fate of the vessel; and in this point of view, Sir, I am in hopes you will see it. The proceeding, indeed, if the British Consul has been rightly informed, and we have no other information of it, has been an act of disrespect towards the United States, to which its Government cannot be inattentive: A just sense of our own rights and duties and the obviousness of the principle are a security that no inconveniences will be permitted to arise from repetitions of it.

The purchase of arms and military accoutrements by an agent of the french Government, in this Country, with an intent to export them to France, is the subject of another of the memorials. Of this fact we are equally uninformed, as of the former. Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle, and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the Hands of any of the belligerent powers on their way to the ports of their enemies. To this penalty our Citizens are warned that they will be

abandoned, and that even private contraventions may work no inequality between the parties at war, the benefit of them will be left equally free and open to all.

The capture of the British ship *Grange*, by the French frigate *l'Embuscade*, has, on inquiry been found to have taken place within the Bay of Delaware and Jurisdiction of the United States, as stated in your memorial of the 2d instant. The government is, therefore, taking measures for the liberation of the Crew and restitution of the ship and cargo.

It condemns in the highest degree the conduct of any of our citizens, who may personally engage in committing hostilities at sea against any of the nations, parties to the present war, and will exert all the means with which the laws and constitution have armed them to discover such as offend herein and bring them to condign punishment. Of these dispositions I am authorized to give assurances to all the parties, without reserve. Our real friendship for them all, our desire to pursue ourselves the path of peace as the only one leading surely to prosperity, and our wish to preserve the morals of our citizens from being vitiated by courses of lawless plunder and murder, may assure you that our proceedings in this respect will be with good faith, fervor and vigilance. Instructions are consequently given to the proper law officer to institute such proceedings as the laws will justify, for apprehending and punishing certain individuals of our Citizens suggested to have been concerned in enterprises of this kind, as mentioned in one of your memorials of the 8th instant.

The practice of commissioning, equipping and manning Vessels, in our ports to cruise on any of the belligerent parties, is equally and entirely disapproved, and the government will take effectual measures to prevent a repetition of it. The remaining point in the same memorial, is reserved for further Consideration.

I trust, Sir, that in the readiness with which the United States have attended to the redress of such wrongs as are committed by their citizens, or within their Jurisdiction, you will see proofs of their justice and impartiality to all parties, and that it will insure to their Citizens pursuing their lawful business by sea or by Land, in all parts of the world, a like efficacious interposition of the governing powers to protect them from injury, and redress it, when it has taken place. With such dispositions, on both sides vigilantly and faithfully carried into effect, we may hope that the blessings of peace, on the one part, will be as little impaired, and the evils of war on the other, as little aggravated, as the nature of things will permit: and that this should be so is we trust the prayer of all.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA, May 15, 1793.

SIR,—Having received several Memorials from the British minister on subjects arising out of the present war, I take the liberty of enclosing them to you, and shall add an explanation of the determinations of

the government thereon. These will serve to indicate the principles on which it is meant to proceed; and which are to be applied with impartiality to the proceedings of both parties. They will form, therefore, as far as they go, a rule of action for them as for us.

In one of these memorials, it is stated, that arms and military accoutrements are now buying up by a French agent in this Country with an intent to export them to France. We have answered that our Citizens have been always free to make, vend and export arms, that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, has not required from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent powers, on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned; and that the purchase of arms here, may work no inequality between the parties at war, the liberty to make them will be enjoyed equally by both.

Another of these memorials complains that the Consul of France at Charleston, has condemned as

legal prize, a British vessel captured by a French frigate, observing that this judicial act is not warranted by the usage of nations nor by the stipulations existing between the United States and France. It is true, that it is not so warranted, nor yet by any law of the Land: that, therefore, it is a mere nullity, can be respected in no court, make no part in the title of the vessel, nor give to the purchaser any other security than what he would have had without it; that consequently it ought to give no concern to any person interested in the fate of the vessel. While we have considered this to be the proper answer, as between us and Great Britain, between us and France, it is an act, to which we cannot but be attentive. An assumption of jurisdiction by an officer of a foreign power, in cases which have not been permitted by the nation within whose limits it has been exercised, could not be deemed an act of indifference. We have not full evidence that the case has happened, but on such an hypothesis, while we should be disposed to view it, in this instance, as an error in judgment in the particular officer, we should rely, Sir, that you would interpose efficaciously, to prevent a repetition of the error by him, or any other of the Consuls of your nation.

Our information is not perfect on the subject matter of another of these memorials, which states that a vessel has been fitted out at Charleston, manned there, and partly too, with Citizens of the United States, received a Commission there to cruize against nations at peace with us, and has taken and sent a British vessel into this port. Without taking all

these facts for granted, we have not hesitated to express our highest disapprobation of the conduct of any of our Citizens who may personally engage in committing hostilities at sea against any of the nations, parties to the present war, and to declare that if the case has happened, or that should it happen, we will exert all the measures with which the Laws and Constitution have armed us, to discover such offenders and bring them to condign punishment. And that the like conduct shall be observed, should the like enterprises be attempted against your nation, I am authorized to give you the most unreserved assurances. Our friendship for all the parties at war; our desire to pursue ourselves the path of peace, as the only one leading surely to prosperity, and our wish to preserve the morals of our Citizens from being vitiated by courses of lawless plunder and murder, are a security that our proceedings, in this respect, will be with good faith, fervor, and vigilance. The arming of men and vessels within our territory, and without consent or consultation on our part, to wage war on nations with which we are at peace, are acts, which we will not gratuitously impute to the public authority of France. They are stated indeed with positiveness in one of the Memorials. But our unwillingness to believe that the French nation could be wanting in respect or friendship to us on any occasion, suspends our assent to, and conclusions upon these statements till further evidence. There is still a further point in this Memorial, to which no answer has been yet given.

The capture of the British Ship *Grange*, by the

French frigate *l'Embuscade*, within the Delaware, has been the subject of a former letter to you. On full and mature consideration, the Government deems the capture to have been unquestionably within it's jurisdiction, and that according to the rules of neutrality and the protection it owes to all persons while within it's limits, it is bound to see that the crew be liberated and the vessel and cargo restored to their former owners. The Attorney General of the United States, has made a statement of the grounds of this determination, a copy of which I have the honor to enclose you. I am, in consequence charged by the President of the United States to express to you his expectation, and at the same time his confidence that you will be pleased to take immediate and effectual measures for having the ship *Grange* and her cargo restored to the British owners, and the persons taken on board her, set at liberty.

I am persuaded, Sir, you will be sensible on mature consideration, that in forming these determinations, the Government of the United States, has listened to nothing but the dictates of immutable Justice: they consider the rigorous exercise of that virtue as the surest means of preserving perfect harmony between the United States and the powers at war.

OPINION ON "THE LITTLE SARAH" W. MSS.

[May 16 1793.]

The facts suggested, or to be taken for granted, because the contrary is not known, in the case now

to be considered, are, that a vessel was purchased at Charleston & fitted out as a privateer by French citizens, manned with foreigners chiefly, but partly with citizens of the U. S., the command given to a French citizen by a regular commission from his government, that she had made prize of an English vessel in the open sea, & sent her in to Philadelphia. The British minister demands restitution, & the question is Whether the Executive of the U. S. shall undertake to make it?

This transaction may be considered 1. as an offence against the U. S. 2. as an injury to Great Britain.

In the 1st view it is not now to be taken up, the opinion being that it has been an act of disrespect to the jurisdiction of the U. S., of which proper notice is to be taken at a proper time.

Under the 2d point of view, it appears to me wrong on the part of the U. S. (where not constrained by treaties) to permit one party in the present war to do what cannot be permitted to the other. We cannot permit the enemies of France to fit out privateers in our ports, by the 22d article of our treaty. We ought not therefore to permit France to do it, the treaty leaving us free to refuse, & the refusal being necessary to preserve a fair and secure neutrality. Yet considering that the present is the first case which has arisen, that it has been in the first moment of the war, in one of the most distant ports of the U. S., and before measures could be taken by the government to meet all the cases which may flow from the infant state of our government and novelty of our position, it ought to be placed by Great Britain

among the accidents of loss to which a nation is exposed in a state of war, and by no means as a premeditated wrong on the part of the government. In this last light it cannot be taken, because the act from which it results placed the U. S. with the offended, & not the offending party. Her minister has seen himself that there could have been on our part neither permission nor connivance. A very moderate apology then from the U. S. ought to satisfy Great Britain. The one we have made already is ample, to wit, a pointed disapprobation of the transaction, a promise to prosecute & punish according to law such of our citizens as have been concerned in it, and to take effectual measures against a repetition. To demand more would be a wrong in Gr. Britain: for to demand satisfaction *beyond* what is adequate, is a wrong. But it is proposed further to take the prize from the captors & restore her to the English. This is a very serious proposition.

The dilemma proposed in our conferences, appears to me unanswerable. Either the commission to the commander of the privateer was good, or not good. If not good, then the tribunals of the country will take cognizance of the transaction, receive the demand of the former owner, & make restitution of the capture, & there being, on this supposition, a regular remedy at law, it would be irregular for the government to interpose.—If the commission be good, then the capture having been made on the high seas, under a valid commission from a power at war with Gr. Britain, the British owner has lost all his right, and the prize would be deemed good even

in his own courts, were the question to be brought before his own courts. He has now no more claim on the vessel than any stranger would have who never owned her, his whole right being transferred by the laws of war to the captor.

The legal right then being in the captor, on what ground can we take it from him? Not on that of *right*, for the right has been transferred to him. It can only be by an act of *force*, that is to say, of reprisal for the offence committed against us in the port of Charleston. But the making of reprisal on a nation is a very serious thing. Remonstrance & refusal of satisfaction ought to precede; & when reprisal follows it is considered as an act of war, & never yet failed to produce it in the case of a nation able to make war.—Besides, if the case were important enough to require reprisal, & ripe for that step, Congress must be called on to take it; the right of reprisal being expressly lodged with them by the constitution, & not with the executive.

I therefore think that the satisfaction already made to the *government* of Great Britain is quite equal to what ought to be desired in the present case: that the property of the British *owner* is transferred by the laws of war to the *captor;* that for us to take it from the captor would be an act of force or reprisal which the circumstances of the case do not justify, & to which the powers of the Executive are not competent by the constitution.

TO JAMES MADISON J. MSS.

PHILA May 19, 1793.

I wrote you last on the 13th Since that I have received yours of the 8th. I have scribbled on a separate paper some general notes on the plan of a house you enclosed. I have done more. I have endeavored to throw the same area, the same extent of walls, the same number of rooms, & of the same sizes, into another form so as to offer a choice to the builder. Indeed I varied my plan by shewing that it would be with alcove bed rooms, to which I am much attached.

I dare say you will have judged from the pusillanimity of the proclamation, from whose pen it came. A fear lest any affection should be discovered is distinguishable enough. This base fear will produce the very evil they wish to avoid. For our constituents seeing that the government does not express their mind, perhaps rather leans the other way, are coming forward to express it themselves. It was suspected that there was not a clear mind in the P's counsellors to receive Genet. The citizens however determined to receive him. Arrangements were taken for meeting him at Gray's ferry in a great body. He escaped that by arriving in town with the letters which brought information that he was on the road. The merchants *i. e.* Fitzsimmons & co. were to present an address to *the P.* on the neutrality proclaimed. It contained much wisdom but no affection. You will see it in the papers inclosed. The citizens determined to address *Genet.* Rittenhouse, Hutcheson, Dallas, Sargeant &c. were at the head of it. Tho a

select body of only 30. was appointed to present it, yet a vast concourse of people attended them. I have not seen it; but it is understood to be the counter address.—Ternant's hopes of employment in the French army turn out to be without grounds. He is told by the minister of war expressly that the places of Marechal de camp are all full. He thinks it more prudent therefore to remain in America. He delivered yesterday his letters of recall, & Mr. Genet presented his of credence. It is impossible for anything to be more affectionate, more magnanimous than the purport of his mission. "We know that under present circumstances we have a right to call upon you for the guarantee of our islands. But we do not desire it. We wish you to do nothing but what is for your own good, and we will do all in our power to promote it. Cherish your own peace & prosperity. You have expressed a willingness to enter into a more liberal treaty of commerce with us; I bring full powers (& he produced them) to form such a treaty, and a preliminary decree of the National convention to lay open our country & it's colonies to you for every purpose of utility, without your participating the burthens of maintaining & defending them. We see in you the only person on earth who can love us sincerely & merit to be so loved." In short he offers everything & asks nothing. Yet I know the offers will be opposed, & suspect they will not be accepted. In short, my dear Sir, it is impossible for you to conceive what is passing in our conclave: and it is evident that one or two at least, under pretence of avoiding war on the one side have

no great antipathy to run foul of it on the other, and to make a part in the confederacy of princes against human liberty.—The people in the Western parts of this state have been to the excise officer & threatened to burn his house &c. They were blacked & otherwise disguised so as to be unknown. He has resigned, and H. says there is no possibility of getting the law executed there, & that probably the evil will spread. A proclamation is to be issued, and another instance of my being forced to appear to approve what I have condemned uniformly from it's first conception.

I expect every day to receive from Mr. Pinckney the model of the Scotch threshing machine. It was to have come in a ship which arrived 3. weeks ago, but the workman had not quite finished it. Mr. P. writes me word that the machine from which my model is taken threshes 8. quarters (64. bushels) of oats *an hour*, with 4. horses & 4. men. I hope to get it in time to have one erected at Monticello to clean out the present crop.—I inclose you the pamphlet you desired. Adieu.

TO MESSRS. COSTER, FRERES & CO. J. MSS.

PHILADELPHIA May 21. 1793.

GENTLEMEN,—I have duly received and considered your favor of the 17th inst complaining that the French privateer, the *Young Mary*, commanded by Phil. Evernent, seized your vessel, the brig *Revolution* commanded by John H. Shackerly,

carried her into Ostend, & there detained her some time, & praying an indemnification. As it is to be presumed the French privateer had orders to cruise on the *enemies* of France only, any violation committed on the vessel of a *friend*, as that complained of by you, would be out of her orders, & not imputable to her sovereign, it is the nature of a trespass, and states are not answerable for the unauthorized trespasses committed by their citizens. All that can be asked of them is to punish them. This we have a right to expect will be done on your prosecution of the matter. Nations however, in their treaties, take another measure to guard their citizens against the irregularities of privateers. They stipulate with each other that no commission shall be issued by either to a privateer without sufficient security taken to indemnify the sufferers by their irregularities. There is such a stipulation in our treaty with France, & we have no doubt that Capt Evernent has given security in the port from which he issued, to which you can resort for indemnification. It would only be in the case that no such security has been taken, or that justice shall be refused you in resorting to it, that the U. S. could make it a subject of national complaint; for my own, as well as your greater satisfaction, I have communicated your papers to the Att^{ny} Gen^{l} of the U S. who concurs with me in the above opinion. I am with great respect Gentlemen Your most obed^{t} humble servt.

TO THE FRENCH MINISTER J. MSS.

(JEAN BAPTISTE TERNANT)

PHILADELPHIA, May 22. 1793.

SIR,—The President of the U. S. in a letter addressed to the Primary Executive council of the French republic, has expressed his sense of your merit & his entire approbation of your conduct while here. He has also charged me to convey to yourself the same sentiments on his part. It is with pleasure I obey this charge, in bearing witness to the candour & integrity of your conduct with us, and to the share you may justly claim in the cultivation of harmony and good understanding between the two nations by a ready accommodation to circumstances whenever offices of friendship or duty were to be claimed or rendered on either side.

To the homage thus paid to truth & justice, permit me to add sincere wishes that in whatever line you may engage for the good of either or both republics, your course may be marked with success & prosperity.

As a testimony of the regard of the U. S. we shall take an early occasion to ask your acceptance of a medal & chain of gold on their part.[1]

[1] "Notes on the subject of the present.

"It was proposed that the medal should always contain 150 dollars worth of gold; it was presumed the gentleman would always keep this.

"The chain was to contain 365 links always, but these to be proportioned in value to the time the person had been here, making each link worth 3 dimes for every year of residence. No expence to be bestowed on the making because it was expected they would turn the chain into money. On this plan."

TO JOHN WAYLES EPPES [1] J. MSS.

PHILADELPHIA, May 23. 1793.

DEAR SIR,—I have just received from Donald & Burton the invoice of your books. Thinking you would be impatient to hear something of them, I inclose you the invoice. They have been shipped from Dublin on board the *Young eagle*, Elias Lord. The four lost in the invoice came here under the care of Mr. Marshal, who told me he would have them delivered to me as soon as they could be come at in the ship. They shall be sent on to you the moment they are landed. I believe I never rendered any account of the money deposited in my hands for your use while here. You know my constant employment & will therefore excuse it. It is to supply the omission that I have now gone over my memorandums & made out a statement. Be so good as to compare it with your own notes & correct mine whenever wrong, for I cannot answer for perfect exactness.—Your friends here complain that you have written to none of them. We do not know whether you are gone or going to W^ms^burg. You have missed seeing what has highly gratified the great mass of Philadelphians, British prizes brought in by French armed vessels. Thousands & thousands collected on the beach when the first came up, & when they saw the British colours reversed & the french flying above them they rented the air with peals of exultation. I have got off my furniture on to Virginia, so as to be in readiness for flight the moment I find an apt occasion.

[1] Afterwards Jefferson's son-in-law, marrying Mary Jefferson, whose cousin he already was.

My friendly respects to Mr. & Mrs. Eppes & family, & am Dear Sir Yours affectionately

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TO HARRY INNES J. MSS.

PHILADELPHIA, May 23, 1793.

DEAR SIR,—I am in your debt for several letters received & not yet acknoleged—one of these is particularly to be noticed, as it was interesting to you; I mean that which concerned your slaves carried off by the Indians. I know that the channel proposed in your letter would effect nothing. I therefore concluded to take the opportunity which I knew was to occur of endeavoring to serve you through the Commissioners who were to go to the treaty with the Indians. Those of the very towns where you supposed your negroes to be were to be at the treaty. A clause would of course be inserted in the treaty for the restoration of all captives of every condition. As Mr. Beverly Randolph was appointed a commissioner, & passed by this place, I put into his hands your letter & description of the slaves, that the moment the treaty should be concluded, he being on the spot with those Indians might avail himself of the opportunity to find out yours & take means for their restoration to you. This he promised me he would do. And it appears to me at least the best chance of recovering them which I have been able to seize. It is very interesting to the U. S. to see how this last effort for living in peace with the Indians will succeed. If it does not, there will be a great revolution of opinion here as to the manner in which they are to be dealt with. If war is to follow, the event of this campaign

will probably fix the kind of instruments to be used. I suspect that your state might form the conduct of this war from us with great advantage to both parties. I fear we are to have it on our own Southern quarter also. It is very necessary for us then to keep clear of the European combustion, *if they will let us*. This they will do probably if France is successful: but if great successes were to attend the arms of the kings, it is far from being certain they might not chuse to finish their job completely, by obliging us to change in the form of our government at least, a change which would be grateful to a party here, not numerous, but wealthy & influential.—The late retreat of the French from the Netherlands, tho' a check, is little decisive. As long as they can be tolerably unanimous internally, they can resist the whole world. The laws of nature render a large country unconquerable if they adhere firmly together & to their purpose. This summer is of immense importance to the future condition of mankind all over the earth, and not a little so to ours. For tho' its issue should not be marked by any direct change in our constitution, it will influence the tone & principles of it's administration so as to lead it to something very different in the one event from what it would be in the other.

TO GOUVERNEUR MORRIS J. MSS.

PHILADELPHIA May 24, 1793.

DEAR SIR,—The bearer hereof, Mr. Barnes, is, as I understand, the representative of the company con-

cerned in the steam navigation, of the late Mr. Rumsey, was the attorney of Mr. Rumsey here, and goes now to Europe to secure the benefit of his discoveries to those entitled to them. In times like these he may need your protection as a stranger, and at all times would merit it as a man of worth & talents. As such I take the liberty of recommending him to your good offices, and particularly so as shall be necessary for securing the benefit of the discoveries in which himself, & those for whom he acts, are interested. To these titles to your patronage he adds that of being a citizen of the U. S. I am with great & sincere esteem Dear Sir Your most obed^{t} & most humble serv^{t}

TO MARTHA JEFFERSON RANDOLPH J. MSS.

PHILADELPHIA, May. 26, 1793.

MY DEAR MARTHA,—Yours & Mr. Randolph's welcome favors of the 16th came to hand yesterday, by which I perceive that your post-day for writing is the Thursday. Maria is here and, tho' not in flourishing health, is well. I will endeavor to prevail on her to write, & perhaps may succeed, as the day is too wet to admit her saunters on the banks of the Schuylkill, where she passes every Sunday with me. We are in sight both of Bartram's & Gray's gardens, but have the river between them & us.—We have two old stories here, the one that Dumourier is gone over to the Austrians. The authority for this is an English paper. No confidence in Dumourier's virtue opposes it, for he has none; but the high reputation he has

acquired is a pledge to the world, of which we do not see that there were any motives on this occasion to induce him to forfeit. The other story is that he has cut off 10,000 Prussians, & among them the K. of Prussia, and D. of Brunswick, the latter we know is out of command, & the former not in Dumourier's way. Therefore we concluded the story fabricated merely to set off against the other. It has now come thro' another channel & in a more possible form to wit that Custine has cut off 10,000 Prussians without naming the King or Duke. Still we give little ear to it. You had at your Convent so many counts (as terminations of names) that I wish the following paragraph of a newspaper may involve none of them: "A few days ago several rich & respectable inhabitants were butchered at Guadaloupe. The following are the names of the unfortunate victims. Madame Vermont & Madame Mayencount, Mons^r Condrecount, three daughters just arrived from France from 11. to 18. years of age, Mess^rs Condrecount." Maria thinks the Condrecounts were at the convent. The French minister Genet told me yesterday that matters appeared now to be tolerably well settled in St. Domingo; that the Patriotic party had taken possession of 600 aristocrats & monocrats, had sent 200 of them to France, & were sending 400 here; and that a coalition had taken place among the other inhabitants. I wish we could distribute our 400 among the Indians, who would teach them lessons of liberty & equality. Give my best affections to Mr. Randolph, & kiss the dear little ones for me.

TO JAMES MADISON MAD. MSS.

May 27, 1793.

I wrote you last on the 19th. The doubts I then entertained that the offers of the Fr. rep. would be declined, will pretty certainly be realized. One person represents them as a snare into which he hopes we shall not fall. His second of the same sentiment of course. He whose vote for the most part, or say always, is casting, has by two or three private conversations or rather disputes with me, shewn his opinion to be against doing what would be a mark of predilection to one of the parties, tho' not a breach of neutrality in form. And an opinion of still more importance is still in the same way. I do not know what line will be adopted, but probably a procrastination, which will be immediately seen through. You will see in the papers two blind stories, the one that Du Mourier is gone over to the Austrians; the other that he has cut to pieces 10,000 Prussians, & among them the K. of Prussia & D. of Brunswick. The latter has come through another channel, placing Custine instead of Du Mourier, & says nothing of the K. & Duke, but no attention is paid to either story. —We want an intelligent prudent native, who will go to reside at N. Orleans as a secret correspondent, for 1000 D. a year. He might do a little business, merely to cover his real office. Do point out such a one. Virginia ought to offer more loungers equal to this & ready for it, than any other state. Adieu. Yours affectionately.

CABINET OPINION ON CREEK INDIANS J. MSS.

May 29th, 1793.

The President of the United States having assembled the heads of the respective departments and the Attorney-General, laid before them for their advice thereon, sundry communications from the Governor of Georgia and others, relatively to the recent alarming depredations of the Creek Indians upon the State of Georgia.

Whereupon after the subject was maturely considered and discussed, it was unanimously advised,

That the Governor of Georgia be informed that from considerations relative to foreign powers, and the pending treaty with the Northern Indians, it is deemed advisable for the present, to avoid offensive expeditions into the Indian country. But from the nature of the late appearances, it is thought expedient to increase the force to be kept up for defensive purposes. The President thereforea uthorizes the calling into, and keeping in service, in addition to the troops heretofore stationed in Georgia, one hundred horse, and one hundred infantry, to be employed in repelling inroads, as circumstances shall require. As it does not yet appear that the whole nation of the Creeks is engaged in hostility, it is considered that this force will be sufficient for the object designated. The case of a serious invasion of the territory of Georgia, by large bodies of Indians, must be referred to the provisions of the Constitution. The proceeding with efficacy in future, requires absolutely, that no unnecessary expense should be incurred in the meantime.

The above corps of horse to be raised for any period of time, not exceeding twelve months, as may be found most practicable; subject to be dismissed at any time sooner, as the government may think fit. The infantry to be called into service, according to the course of the militia laws, endeavoring to secure their continuance in service for the like term.

That General Pickens be invited to repair to the seat of government, for the purpose of information and consultation—a proper compensation for his expenses and loss of time to be allowed.

That a further supply of one thousand arms, with corresponding accoutrements, to be forwarded to the State of Georgia. Arms and accoutrements for the cavalry to be also provided and forwarded.

That an agent be sent to the Creeks, to endeavor to adjust the surrender of those Indians who have lately committed murders on the citizens of Georgia; to conciliate and secure such of the Indians as may be well-disposed to the United States, in the event of a war with the Creek nation; and, if possible, to prevent that extremity.

TO THE U. S. COMMISSIONERS TO SPAIN J. MSS.
(CARMICHAEL AND SHORT)

PHILADELPHIA May 31st, 1793.

GENTLEMEN,—In my letters of Oct. 14 & Nov. 3, 1792, I communicated to you, papers and Observations on the conduct of the Spanish Officers on our South Western frontier, and particularly of the Baron de Carondelet, the Governor of New Orleans. These

made it evident that he had industriously excited the Southern Indians to war against us, and had furnished them with arms and ammunition, in abundance, for that express purpose. We placed this under the view of the Commissioners of Spain here, who undertook to communicate it to their Court, and also to write on the subject to the Baron de Carondelet. They have lately made us communications from both these Quarters; the aspect of which, however, is by no means such as to remove the causes of our dissatisfaction. I send you these communications, consisting of Treaties between Spain, the Creeks, Choctaws, Chickasaws, & Cherokees, handed us by express order from their Court, a Speech of Baron de Carondelet, to the Cherokees, and a letter from Messrs. de Viar & Jaudenes, covering that Speech, & containing in itself very serious matter.

I will first observe to you, that the question stated in that letter, to have been proposed to the Cherokees, What part they would take in the event of a war, between the United States and Spain? was never proposed by authority from this government. Its instructions to its Agents, have on the contrary, been explicitly to cultivate, with good faith, the peace between Spain and the Indians: and from the known prudence and good conduct of Governor Blount, to whom it is imputed, it is not believed to have been proposed by him. This proposition then you are authorized to disavow, to the Court of Madrid, in the most unequivocal terms.

With respect to the treaties, the Speech and the

letter, you will see that they undertake to espouse the concerns of Indians within our limits; to be mediators of boundary between them and us; to guarantee that boundary to them; to support them with their whole power; and hazard to us intimations of acquiescence to avoid disagreeable results. They even propose to extend their intermeddlings to the northern Indians. These are pretensions so totally inconsistent with the usages established among the white nations, with respect to indians living within their several limits, that it is believed no example of them can be produced, in times of peace; and they are presented to us in a manner, which we cannot deem friendly. The consequence is, that the Indians, and particularly the Creeks, finding themselves so encouraged, have passed, without the least provocation on our part, from a state of peace, which appeared to be well settled, to that of serious hostility. Their murders and Depredations, which, for some months, we were willing to hope were only individual aggressions, now assume the appearance of unequivocal war. Yet, such is our desire of courting and cultivating the peace of all our Indian neighbors, that instead of marching at once into their country, and taking satisfaction ourselves, we are peaceably requiring punishment of the individual aggressors; and, in the meantime, are holding ourselves entirely on the defensive. But this state of things cannot continue. Our citizens are entitled to effectual protection, and defensive measures are, at the same time, the most expensive and least effectual. If we find then, that peace cannot be

obtained by the temperate means we are still pursuing, we must proceed to those which are extreme, and meet all the consequences, of whatever nature or from whatever quarter they may be. We have certainly been always desirous to avoid whatever might disturb our harmony with Spain. We should be still more so, at a moment when we see that nation making part of so powerful a confederacy as is formed in Europe, and under particular good understanding with England, our other neighbor. In so delicate a position, therefore, instead of expressing our sense of these things, by way of answer to Messrs Viar & Jaudenes, the President has thought it better that it should be done to you, and to trust to your discretion the moment, the measure, and the form, of communicating it to the Court of Madrid. The actual state of Europe, at the time you will receive this, the solidity of the confederacy, and especially, as between Spain and England, the temper and views of the former, or of both, towards us, the state of your negotiation, are circumstances, which will enable you better to decide how far it may be necessary to soften, or even, perhaps, to suppress, the expressions of our sentiments on this subject. To your discretion therefore, it is committed, by the President, to let the Court of Spain see how impossible it is for us to submit with folded arms, to be butchered by these Savages, and to prepare them to view, with a just Eye, the more vigorous measures we must pursue to put an end to their atrocities, if the moderate ones, we are now taking, should fail of that effect.

Our situation, on other accounts, and in other

quarters, is critical. The President is, therefore, constantly anxious to know the state of things with you: and I entreat you to keep him constantly and well-informed. Mr. Yznardi, the younger, lately appointed Consul of the United States at Cadiz, may be a convenient channel of forwarding your letters.

TO THE FRENCH MINISTER J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA June 1. 1793.

SIR,—I have to acknowledge the receipt of your note of the 27th of May on the subject of Gideon Henfield, a citizen of the United States, engaged on board an armed vessel in the service of France. It has been laid before the President, and referred to the Attorney General of the United States, for his opinion on the matter of law, and I have now the honor of enclosing you a copy of that opinion. Mr. Henfield appears to be in the custody of the civil magistrate, over whose proceedings the executive has no controul. The act with which he is charged will be examined by a jury of his countrymen, in the presence of judges of learning and integrity, and if it is not contrary to the laws of the land, no doubt need be entertained that his case will issue accordingly.

The forms of the Law involve certain necessary delays; of which however, he will assuredly experience none but what are necessary.

P. S. After writing the above I was honored with your note on the subject of Singleterry on which it is

in my power to say nothing more than in that of Henfield.[1]

CABINET OPINION ON SECRET INDIAN AGENT

J. MSS.

June 1, 1793.

That an agent be sent to the Choctaw nation, to endeavor secretly to engage them to support the Chicka-

[1] A first draft of this letter terminated as follows: "no doubt need be entertained that his case will have the favorable issue you desire. The forms of law involve certain necessary delays; of which however he will assuredly experience none but what are necessary. It will give me great pleasure to be able to communicate to you that the laws (which admit of no controul) on being applied to the actions of Mr. Henfield, shall have found in them no cause of animadversion."

On the back of this first draft, Jefferson wrote: "A clause stood in the original draught in these words. 'it will give me great pleasure to be able to communicate to you &c.—Animadversion' (see it still legible on the other side). E. R. objected to it as conveying a wish that the act might not be punishable, and proposed it should be 'it will give me great pleasure to be able to communicate to you that on his examination he shall be found to be innocent.' It was done. The letter with this alteration was sent into the country to Colo. Hamilton, who found the clause, even as altered, to be too strong & proposed it should be omitted. It was therefore struck out altogether. See his letter of June 3."

Hamilton's letter referred to, was:

"TREASURY DEPARTMENT, June 3d, 1793.

"SIR,—It was not till within an hour that I received your letter of the 1st, with the papers accompanying it. I approve all the drafts of letters as they stand, except that I have some doubts about the concluding sentence, of that on the subject of HENFIELD. If the *facts* are (as I presume they are) established, may it not be construed into a wish, that there may be found no law to punish a conduct in our citizens, which is of a tendency dangerous to the peace of the nation, and injurious to powers with whom we are on terms of peace and neutrality.

"I should also like to substitute for the words 'have the favorable issue you desire,' these words, 'issue accordingly.'

"I retain, till to-morrow, the paper relating to an agent to the Choctaws. My judgment is not entirely made up on the point—the

saws in their present war with the Creeks—giving them, for that purpose, arms and ammunition sufficient; and that it be kept in view, that if we settle our differences amicably with the Creeks, we at the same time mediate effectually the peace of the Chickasaws and Choctaws; so as to rescue the former from the difficulties in which they are engaged, and the latter

state of my family and my own health having prevented due reflection upon it.

"With great respect, I have the honor to be, &c."

In the Washington MSS. there is a paper by Jefferson based on this Henfield case, which follows:

"NOTES.

"Cases where individuals (as Henfield &c.) organize themselves into military bodies within the US. or participate in acts of hostility by sea, where *jurisdiction attaches to the person.*

"What is the present legal mode of *restraint?* binding to the good behavior? military restraint? or what? or can the act only be *punished* after it is committed?

"Vessels originally constituting themselves cruizers here, or those so constituted elsewhere & augmenting their force here, may they be seized and detained?

"By what branch of the government? e. g. the *Polly* or *Republican* at N. Y. the *Jane* at Philade. the *Industry* at Baltimore. Their Prizes, may they be

"TEXT.

"The Constitution having authorised the legislature exclusively to declare whether the nation, from a state of peace, shall go into that of war, it rests with their wisdom to consider Whether the restraints already provided by the laws are sufficient to prevent individuals from usurping, *in effect*, that power, by taking part, or arraying themselves to take part, by sea or by land, while under the jurisdiction of the US. in the hostilities of any one nation against any other with which the US. are at peace?

"Whether the laws have provided with sufficient efficacy & explicitness, for arresting & restraining their preparations & enterprizes, & for indemnifying their effects?

from those into which we may have been instrumental in engaging them.

TH. JEFFERSON, H. KNOX.

Although I approve of the general policy of employing Indians against Indians, yet I doubt, greatly, whether it ought to be exercised under the particular

restored? e. g. the *Lovely lass*, Pr. Wm. Henry, *Jane* of Dublin, the Spanish prize &c.

"Captures within our waters, by whom to be restored? e. g. the *George*, the *William*, the *Providence*, the *William Tell* &c.

"Cases of the *Betsey*, an American vessel & Swedish cargo.

"The *Maxwell*, vessel & cargo Swedish.

"Merely an intimation to establish all these cases with the Judiciary.

"Whether within the territory of the US. or those limits on it's shores to which reason & usage authorize them to extend their jurisdiction & protection, & to interdict every hostile act, even between hostile nations, the partition of the national authority between the civil & military organs is delineated with sufficient precision to leave no doubt which of the two is justified, & is bound, to interpose?

"Whether either & which of them is authorized to liberate our own property, or that of other peaceable nations, taken on the high seas & brought into our ports?

"Whether all such of these interferences as may be exercised by the judiciary bodies with equal efficacy, with more regularity, and with greater safety to the rights of individuals, citizen or alien, are already placed under their cognizance, so as to leave no room for diversity of judgment among them, no necessity or ground for any other branch to exercise them, merely that there may not be a defect of justice or

existing circumstances with Spain; who may hold herself bound to take the part of the Creeks, and criminate the United States for some degree of insincerity.

EDM. RANDOLPH.

My judgment balanced a considerable time on the proposed measure; but it has at length decided against it, and very materially, on the ground, that I do not think the United States can honorably or morally, or with good policy, embark the Choctaws in the war, without a determination to extricate them from the consequences, even by force. Accordingly it is proposed that, in settling our differences with the Creeks, "*we mediate effectually* the peace of the Chickasaws and Choctaws;" which I understand to mean, that we are to insist with the Creeks on such terms of peace for them as shall appear to us equitable; and if refused, will exert ourselves *to procure them by arms*. I am unwilling, all circumstances foreign and domestic considered, to embarrass the government with such an obligation.

ALEXANDER HAMILTON.

"For a specification of some of these duties see Jay's & Wilson's charges. Are they all sufficiently provided with specific punishments?

"Offences against the Law of Nations. Genet's conduct is one. by that law the President may order him away. Has the law provided for the efficacy of this order?"

protection, or a breach of public order?

"And Whether the duties of a nation at peace towards those at war, imposed by the laws and usages of nature, & nations, & such other offences against the law of nations as present circumstances may produce, are provided for by the municipal law with those details of internal sanction and coercion, the mode & measure of which that alone can establish?"

TO JAMES MADISON J. MSS.

June 2, 1793.

I wrote you on the 27th ult. You have seen in the papers that some privateers have been fitted out in Charleston by French citizens, with their own money, manned by themselves, & regularly commissioned by their nation. They have taken several prizes & brought them into our ports. Some native citizens had joined them. These are arrested & under prosecution, & orders are sent to all the ports to prevent the equipping privateers by any persons foreign or native. So far is right. But the vessels so equipped at Charleston are ordered to leave the ports of the U S. This I think was not right. Hammond demanded further a surrender of the prizes they had taken. This is refused, on the principle that by the laws of war the property is transferred to the captors. You will see, in a paper I inclose, Dumourier's address to his nation, & also Saxe Cobourg's. I am glad to see a probability that the constitution of 1791, would be the term at which the combined powers would stop. Consequently that the reestablishment of that is the worst the French have to fear. I am also glad to see that the combiners adopt the slow process of nibbling at the strong posts on the frontiers. This will give to France a great deal of time. The thing which gives me uneasiness is their internal combustion. This may by famine be rendered extreme. E. R. sets out, the day after tomorrow for Virginia. I have no doubt he is charged to bring back a faithful statement of the dispositions of that state. I wish therefore he may fall into hands which

will not deceive him. Have you time & the means of impressing Wilson Nicholas, (who will be much with E. R.) with the necessity of giving him a strong & perfect understanding of the public mind? Considering that this journey may strengthen his nerves, and dispose him more favorably to the propositions of a treaty between the two republics, knowing that in this moment the division on that question is 4. to 1. & that the last news has no tendency to proselyte any of the majority, I have myself proposed to refer taking up the question till his return. There is too at this time a lowering disposition perceivable both in England & Spain. The former keeps herself aloof & in a state of incommunication with us, except in the way of demand. The latter has not begun auspiciously with C. & S. at Madrid, and has lately sent 1500. men to N. Orleans, and greatly strengthened her upper posts on the Missisipi.—I think it more probable than otherwise that Congress will be convened before the constitutional day. About the last of July this may be known. I should myself wish to keep their meeting off to the beginng. of October, if affairs will permit it. The invasion of the creeks is what will most likely occasion it's convocation. You will see Mrs. House's death mentioned in the papers. She extinguished almost like a candle. I have not seen Mrs. Trist since, but I am told she means to give up the house immediately, & that she has suffered great loss in her own fortune by exertions hitherto to support it. Browne is not returned, nor has been heard of for some time. Bartram is extremely anxious to get a large supply of seeds of the

Kentucky coffee tree. I told him I would use all my interest with you to obtain it, as I think I heard you say that some neighbor of yours had a large number of trees. Be so good as to take measures for bringing a good quantity if possible to Bartram when you come to Congress. Adieu. Yours affectionately.

TO THE U. S. MINISTER TO GREAT BRITAIN (THOMAS PINCKNEY) J. MSS.

PHILADELPHIA, June 2d, 1793.

DEAR SIR,— * * * Your information that we are not likely to obtain any protection for our seamen in British ports or against British officers on the high seas, is of a serious nature indeed. It contrasts remarkably with the multiplied applications we are receiving from the British minister here for protection to their seamen, vessels, & property within our ports & bays, which we are complying with with the most exact justice. However I shall hazard no further reflection on the subject thro' the present channel of consequences. You will be pleased to bear in mind what I wrote you on the subject of M. de la Fayette, to consider it as an object of interest in this country, & to let me know what may be expected in the case.

TO THE SECRETARY OF THE TREASURY (ALEXANDER HAMILTON) J. MSS.

June 3. 1793.

SIR,—The question of admitting modifications of the debt of the U.S. to France having been the subject

of & consultation with the heads of the departments & the Attorney general, & an unanimous opinion given thereon which involves the inclosed propositions from the French minister, you will be pleased, under the form of a report to me, to prepare what may serve as an answer, making it conformable to the opinion already given. If however the instalments of the present year can be made a matter of accommodation & it be mutual, their near approach may perhaps admit it within the spirit of the opinion given.

TO JAMES MONROE J. MSS.

PHILADELPHIA, June 4. 1793.

DEAR SIR,—I am to acknolege your favour of May 8. & 23. & to express my perfect satisfaction with what you have done in the case of Barrett. With respect to the interest from the date of the judgment it is a thing of course, & always as just as the judgment itself. If he swears that the account is unpaid, I shall be satisfied he believes it to be so, and in that case would always have paid it had he applied to me, because I do not possess equal evidence to the contrary.

The original sum having been about 50 or 59 £ with interest from Apr 19. 1783, the order I gave you on Mr Pope will be more than sufficient to cover it, and will render a delay until the fall unnecessary, as I may hope. The money too, coming to the hands of Mr. Pope, his own lawyer, will abridge the business.

I will certainly do justice to Mr Gamble's competition for the French purchases of flour. I have written to him on that subject. I mean shortly to take a trip to Brandywine & endeavor to engage a tenant for my mill, so as to produce some competition for the purchase of our flour. I shall go on also to Elkton to take arrangements of time with the tenants engaged for me there. On these may depend the time I see you in Albermarle, as I must precede them.—You should look to the possibility of being called to Philadelphia early in October, if matters with the Creek Indians continue to near their present serious aspect. The times too are otherwise so pregnent of events that every moment may produce cause for calling you. France has explained herself generously. She does not mean to interrupt our prosperity by calling for our guarantee. On the contrary she wishes to promote it by giving us in all her possessions all the rights of her native citizens & to receive our vessels as her vessels. This is the language of her new minister. G. Britain holds back with the most sullen silence and reserve. She has never intimated to our Minister a wish that we would remain neutral. Our correspondence with her consists in *demands* where she is interested, & *delays* where we are.

Spain too is mysterious—nothing promising at Madrid, and contrary symptoms on the Mississippi. Were the combination of kings to have a very successful campaign I should doubt their moderation.—Parties seem to have taken a very well defined form in this quarter. The old tories, joined by our merchants who trade on British capital, paper dealers, and the

idle rich of the great commercial towns, are with the kings. All other descriptions with the French. The war has kindled & brought forward the two parties with an ardour which our own interests merely, could never excite. I pray that the events of the summer may not damp the spirit of our approaching Congress to whom we look forward to give the last direction to the government in which we are embarked. Give my best affections to Mrs. Monroe, & accept them sincerely for yourself. Adieu.

TO THE FRENCH MINISTER (EDMOND CHARLES GENET) J. MSS.

PHILADELPHIA June 5, 1793

SIR,—In my letter of May 15th, to M. de Ternant, your predecessor, after stating the answers which had been given to the several memorials of the British Minister of May 8th, it was observed that a part remained still unanswered: of that which respected the fitting out of armed vessels in Charleston to cruise against nations with whom we were at peace.

In a conversation which I had afterwards the honor of holding with you, I observed that one of those armed vessels, the *Citizen Genet*, had come into this Port with a prize; that the President had thereupon, taken the case into further consideration, and after mature consultation and deliberation was of opinion that the arming and equipping vessels in the Ports of the United States to cruise against nations with whom they are at peace, was incompatible with the territorial sovereignty of the United States; that it made

them instrumental to the annoyance of those nations, and thereby tended to compromit their peace, and that he thought it necessary as an evidence of good faith to them, as well as a proper reparation to the Sovereignty of the country, that the armed vessels of this description should depart from the ports of the United States.

The letter of the 27th instant, with which you have honored me, has been laid before the President, and that part of it which contains your observations on this subject has been particularly attended to. The respect due to whatever comes from you, friendship for the french nation, and justice to all have induced him to reexamine the subject, and particularly to give to your representations thereon, the consideration they deservedly claim. After fully weighing again however all the principles and circumstances of the case, the result appears still to be that it is the *right* of every nation to prohibit acts of sovereignty from being exercised by any other within its limits; and the *duty* of a neutral nation to prohibit such as would injure one of the warring powers: that the granting military commissions within the United States by any other authority than their own is an infringement on their Sovereignty, and particularly so when granted to their own citizens, to lead them to commit acts contrary to the duties they owe their own country; that the departure of vessels thus illegally equipped, from the Ports of the United States, will be but an acknowledgment of respect analogous to the breach of it, while it is necessary on their part, as an evidence of their faithful neutrality. On these considerations Sir,

the President thinks that the United States owe it to themselves, and to the nations in their friendship, to expect this act of reparation, on the part of vessels marked in their very equipment with offence to the laws of the land, of which the law of nations makes an integral part.

The expressions of friendly sentiment, which we have already had the satisfaction of receiving from you leave no room to doubt that the conclusion of the President, being thus made known to you these vessels will be permitted to give no further umbrage by their presence in the Ports of United States.

OPINION ON NEW LOAN [1]

June 5, 1793.

Instructions having been given to borrow two millions of florins in Holland, and the Secretary of the Treasury proposing to open a further loan of three millions of florins, which he says, "a comprehensive view of the affairs of the United States in various relations appear to recommend," the President is pleased to ask whether I see any objections to the proposition.

The power to borrow money is confided to the President by the two acts of the 4th and 12th of August, '90; and the moneys when borrowed, are appropriated to two purposes only, to wit; the twelve millions to be borrowed under the former are appropriated to discharge the arrears of interest and

[1] See under June 17th, 1793. From Hamilton's *Works of Hamilton.*

instalments of the foreign debt, and the two millions under the latter to the purchase of the public debt under the direction of the Trustees of the Sinking Fund.

These appropriations render very simple the duties of the President in the discharge of this trust. He has only to look to the payment of the foreign debt, and purchase of the general one; and in order to judge for himself of the necessity of the loan proposed for effecting these two purposes, he will need from the Treasury the following statements:

A. A statement of the nett amount of the loans already made under these acts, adding to that the two millions of florins now in a course of being borrowed. This will form the debit of the trust. The credit side of the account will consist of the following statements, to wit:

B. Amount of the principal and interest of foreign debt paid and payable to the close of 1792.

C. Ditto, payable to the close of 1793.

D. Ditto, payable to the close of 1794, (for I think our preparations should be a year beforehand).

E. Amount of moneys necessary for the sinking fund to the end of the year 1794.

If the amount of the four last articles exceeds the first, it will prove a further loan necessary to that extent. The treasury alone can furnish these statements with perfect accuracy; but to show that there is probable cause to go into the examination, I will hazard a statement from materials, which though not perfectly exact, are not much otherwise. [*Statement not found.*]

By this statement it would seem as if all the payments to France, hitherto made and ordered, did not quite acquit the year 1792, so that we have never yet been clear of arrears to her. The amount of the French debt is stated according to the Convention, and the interest is calculated accordingly. Interest on the ten million loan is known to have been paid for the years '84, '85, and is therefore deducted. It is not known whether it was included in that payment. Therefore this is not deducted; but if in fact it was paid before that day, it will then have lessened the debt so much, to wit, 400,000 livres a year for four years, making it 1,600,000 livres—290,000 dollars, which sum would put us in advance near half of the instalments of 1793. Note. Livres are estimated at $18\frac{19}{100}$ cents, proposed by the Secretary of the Treasury to the French ministry as the par of the metals, to be the rate of conversion.

This uncertainty with respect to the true state of the account with France and the difference of the result from what has been understood, shows that the gentlemen who are to give opinions on this subject, must do it in the dark, and suggests to the President the propriety of having an exact statement of the account with France communicated to them, as the ground on which they are to give opinions. It will probably be material in that about to be given on the late application of Mr. Genet, on which the Secretary is preparing a report.

TO THE BRITISH MINISTER J. MSS.
(GEORGE HAMMOND)

PHILADELPHIA, June 5, 1793.

SIR,—In the letter which I had the honor of writing you on the 15th of May, in answer to your several memorials of the 8th of that month, I mentioned that the President reserved, for further consideration, a part of the one which related to the equipment of two privateers in the port of Charleston. The part alluded to, was that wherein you express your confidence that the Executive Government of the United States would pursue measures for repressing such practices in future, and for restoring to their rightful owners any captures, which such privateers might bring into the ports of the United States.

The President, after a full investigation of this subject, and the most mature consideration, has charged me to communicate to you, that the first part of this application, is found to be just, and that effectual measures are taken for preventing repetitions of the act therein complained of: but that the latter part, desiring restitution of the prizes is understood to be inconsistent with the rules, which govern such Cases, and would, therefore, be unjustifiable towards the other party.

The principal Agents in this Transaction were French citizens. Being within the United States, the moment a war broke out between their own and another country, they determine to go into it's defence; they purchase, arm, and equip, a vessel, with their own money, man it themselves, receive a regular Commission from their nation, depart out of the

United States, and then commence hostilities, by capturing a vessel. If, under these circumstances, the commission of the captors was valid, the property, according to the laws of war, was, by the capture transferred to them, and it would be an aggression on their nation, for the United States to rescue it from them, whether on the high seas or on coming into their ports. If the commission was not valid, and, consequently the property not transferred, by the laws of war, to the Captors, then the case would have been cognizable in our Courts of Admiralty, and the owners might have gone thither for redress. So that on neither supposition, would the Executive be justifiable in interposing.

With respect to the United States, the transaction can in nowise be imputed to them. It was the first moment of the war, in one of their most distant ports, before measures could be provided by the Government to meet all the cases, which such a state of things was to produce; impossible to have been known, and, therefore, impossible to have been prevented by that Government.

The moment it was known, the most energetic orders were sent to every State and port of the Union, to prevent a repetition of the accident. On a suggestion that Citizens of the United States had taken part in the act, one, who was designated, was instantly committed to prison, for prosecution; one or two others have been since named, and committed in like manner; and, should it appear, that there were still others, no measures will be spared to bring them to Justice.—The President has even gone

further. He has required, as a reparation of their breach of respect to the United States, that the vessels, so armed and equipped, shall depart from our Ports.

You will see, Sir, in these proceedings of the President, unequivocal proofs of the line of strict right, which he means to pursue. The measures now mentioned, are taken in justice to the one party; the ulterior measure, of seizing and restoring the prizes, is declined, in justice to the other: and the evil, thus early arrested, will be of very limited effects; perhaps, indeed, soon disappear altogether.

TO THE PRESIDENT OF THE UNITED STATES

J. MSS.

June 6, 1793.

SIR,—I cannot but think that, to decline the propositions of Mr. Genet on the subject of our debt, without assigning any reason at all would have a very dry and unpleasant aspect indeed. We are then to examine what are our good reasons for the refusal, which of them may be spoken out, & which may not. 1. Want of confidence in the continuance of the present form of government, and consequently that *advances* to them might commit us with their successors. This cannot be spoken out. 2. Since they propose to take the debt in produce, it would be better for us that it should be done in moderate masses yearly, than all in one year. This cannot be professed. 3. When M. de Calonne was minister of finance, a Dutch company proposed to buy up the

whole of our debt, by dividing it into actions or shares. I think Mr. Claviere, now minister of finance, was their agent. It was observed to M. de Calonne that to create such a mass of American paper, divide it into shares, and let them deluge the market, would depreciate them, the rest of our paper, and our credit in general. That the credit of a nation was a delicate and important thing & should not be risked on such an operation. M. de Calonne, sensible of the injury of the operation to us, declined it. In May, 1791 there came, thro' Mr. Otto, a similar proposition from Schweizer, Jeanneret & co. We had a representation on the subject from Mr. Short, urging this same reason strongly. It was referred to the Secretary of the Treasury, who in a letter to yourself assigned the reasons against it, and these were communicated to Mr. Otto, who acquiesced in them. This objection then having been sufficient to decline the proposition twice before, & having been urged to the two preceding forms of government (the antient & that of 1791) will not be considered by them as founded in objections to the present form. 4. The law allows the whole debt to be paid only on condition it can be done on terms *advantageous* to the U S. The minister foresees this objection & thinks he answers it by observing the *advantage* which the payment in *produce* will occasion. It would be easy to shew that this was not the sort of advantage the legislature meant, but a *lower rate of interest.* 5. I cannot but suppose that the Secretary of the Treasury much more familiar than I am with the money operations of the treasury would on examination be

able to derive practical objections from them. We pay to France but 5. per cent. The people of this country would never subscribe their money for less than 6. If to remedy this, obligations at less than 5. per cent were offered & accepted by Mr. Genet, he must part with them immediately at a considerable discount to indemnify the loss of the 1. per cent: and at a still greater discount to bring them down to par with our present 6. per cent: so that the operation would be equally disgraceful to us & losing to them &c. &c. &c.

I think it very material myself to keep alive the friendly sentiments of that country as far as can be done without risking war, or double payment. If the instalments falling due this year can be advanced, without incurring those dangers, I should be for doing it. We now see by the declaration of the Prince of Saxe-Cobourg on the part of Austria & Prussia that the ultimate point they desire is to restore the constitution of 1791. Were this even to be done before the pay-days of this year there is no doubt in my mind but that that government (as republican as the present except in the form of it's executive) would confirm an advance so moderate in sum & time. I am sure *the nation* of France would never suffer their government to go to war *with us* for such a *bagatelle*, & the more surely if that bagatelle shall have been granted by us so as to *please* and not to *displease the nation;* so as to keep their affections engaged on our side. So that I should have no fear in advancing the instalments of this year at epochs convenient to the treasury. But at

any rate I should be for assigning reasons for not changing the form of the debt. These thoughts are very hastily thrown on paper, as will be but too evident.

TO MRS. CHURCH [1]

PHILADELPHIA, June 7th, 1793.

DEAR MADAM,—Monsieur de Noailles has been so kind as to deliver me your letter. It fills up the measure of his titles to any service I can render him. It has served to recall to my mind remembrances which are very dear to it, and which often furnish a delicious resort from the dry and oppressive scenes of business. Never was any mortal more tired of these than I am. I thought to have been clear of them some months ago, but shall be detained a little longer, and then I hope to get back to those scenes for which alone my heart was made. I had understood we were shortly to have the happiness of seeing you in America. It is now, I think, the only country of tranquillity, and should be the asylum of all those who wish to avoid the scenes which have crushed our friends in Paris. What is become of Madame de Corny? I have never heard of her since I returned to America. Where is Mrs. Cosway? I have heard she was become a mother; but is the new object to absorb all her affections? I think, if you do not return to America soon, you will be fixed in England by new family connections; for I am sure my dear Kitty is too handsome and too

[1] From S. N. Randolph's *Domestic Life of Jefferson*, page 220.

good not to be sought, and sought till, for peace's sake, she must make somebody happy. Her friend Maria writes to her now, and I greet her with sincere attachment. Accept yourself assurances of the same from, dear Madam, your affectionate and humble servant.

TO JAMES MADISON J. MSS.

June 9, 1793.

I have to acknolege the receipt of your two favors of May 27 & 29, since the date of my last which was of the 2 inst. In that of the 27th you say "you must not make your final exit from public life till it will be marked with justifying circumstances which all good citizens will respect, & to which your friends can appeal."—To my fellow-citizens the debt of service has been fully & faithfully paid. I acknolege that such a debt exists, that a tour of duty, in whatever line he can be most useful to his country, is due from every individual. It is not easy perhaps to say of what length exactly this tour should be, but we may safely say of what length it should not be. Not of our whole life, for instance, for that would be to be born a slave—not even of a very large portion of it. I have now been in the public service four & twenty years; one half of which has been spent in total occupation with their affairs, & absence from my own. I have served my tour then. No positive engagement, by word or deed, binds me to their further service. No commitment of their interests in any enterprise by me requires that I

should see them through it.—I am pledged by no act which gives any tribunal a call upon me before I withdraw. Even my enemies do not pretend this. I stand clear then of public right on all points.—My friends I have not committed. No circumstances have attended my passage from office to office, which could lead them, & others through them, into deception as to the time I might remain; & particularly they & all have known with what reluctance I engaged & have continued in the present one, & of my uniform determination to retire from it at an early day.—If the public then has no claim on me, & my friends nothing to justify; the decision will rest on my own feelings alone. There has been a time when these were very different from what they are now: when perhaps the esteem of the world was of higher value in my eye than everything in it. But age, experience & reflection, preserving to that only it's due value, have set a higher on tranquility. The motion of my blood no longer keeps time with the tumult of the world. It leads me to seek for happiness in the lap and love of my family, in the society of my neighbors & my books, in the wholesome occupations of my farm & my affairs, in an interest or affection in every bud that opens, in every breath that blows around me, in an entire freedom of rest or motion, of thought or incogitancy, owing account to myself alone of my hours & actions. What must be the principle of that calculation which should balance against these the circumstances of my present existence! worn down with labours from morning to night, & day to day; knowing them as

fruitless to others as they are vexatious to myself, committed singly in desperate & eternal contest against a host who are systematically undermining the public liberty & prosperity, even the rare hours of relaxation sacrificed to the society of persons in the same intentions, of whose hatred I am conscious even in those moments of conviviality when the heart wishes most to open itself to the effusions of friendship & confidence, cut off from my family & friends, my affairs abandoned to chaos & derangement, in short giving everything I love, in exchange for everything I hate, and all this without a single gratification in possession or prospect, in present enjoyment or future wish.—Indeed my dear friend, duty being out of the question, inclination cuts off all argument, & so never let there be more between you & me, on this subject.

I inclose you some papers which have passed on the subject of a new loan. You will see by them that the paper-Coryphæus is either undaunted, or desperate. I believe that the statement inclosed has secured a decision against his proposition.—I dined yesterday in a company where Morris & Bingham were, & happened to sit between them. In the course of a conversation after dinner Morris made one of his warm declarations that after the expiration of his present Senatorial term nothing on earth should ever engage him to serve again in any public capacity. He did this with such solemnity as renders it impossible he should not be in earnest.—The President is not well. Little lingering fevers have been hanging about him for a week or ten days, and

have affected his looks most remarkably. He is also extremely affected by the attacks made & kept up on him in the public papers. I think he feels those things more than any person I ever yet met with. I am sincerely sorry to see them. I remember an observation of yours, made when I first went to New York, that the satellites & sycophants which surrounded him had wound up the ceremonials of the government to a pitch of stateliness which nothing but his personal character could have supported, & which no character after him could ever maintain. It appears now that even his will be insufficient to justify them in the appeal of the times to common sense as the arbiter of everything. Naked he would have been sanctimoniously reverenced, but inveloped in the rags of royalty, they can hardly be torn off without laceration. It is the more unfortunate that this attack is planted on popular ground, on the love of the people to France & it's cause, which is universal.—Genet mentions freely enough in conversation that France does not wish to involve us in the war by our guarantee. The information from St. Domingo & Martinique is that those two islands are disposed & able to resist any attack which Great Britain can make on them by land. A blockade would be dangerous, could it be maintained in that climate for any length of time. I delivered to Genet your letter to Roland. As the latter is out of office, he will direct it to the Minister of the Interior. I found every syllable of it strictly proper. Your ploughs shall be duly attended to. Have you ever taken notice of Tu'lls horse-houghing plough? I am

persuaded that that, where you wish your work to be very exact, & our great plough where a less degree will suffice, leave us nothing to wish for from other countries as to ploughs, under our circumstances.— I have not yet received my threshing machine. I fear the late long & heavy rains must have extended to us, & affected our wheat. Adieu. Yours affectionately.

TO THE FRENCH MINISTER J. MSS.
(EDMOND CHARLES GENET)

PHILADELPHIA, June 11, 1793.

SIR,—I had the honor of laying before the President your memorial of the 22d of May proposing that the United States should now pay up all the future instalments of their debt to France, on condition that the sum should be vested in produce. The President having fully deliberated on this subject, has now the honor of inclosing you a report from the Treasury Department made in consequence thereof, and explaining the circumstances which prevent the United States from acceeding to that proposition.

In fact, the instalments as they are settled by convention between the two nations far exceed the ordinary resources of the United States. To accomplish them completely and punctually, we are obliged to anticipate the revenues of future terms by loans to as great an extent as we can prudently attempt. As they are arranged however by the convention, they give us time for successive and gradual efforts. But to crowd these anticipations all into a single one,

and that to be executed, in the present instant, would more than hazard that state of credit, the preservation of which can alone enable us to meet the different payments at the time agreed on. To do even this hitherto, has required in the operations of borrowing, time, prudence and patience; and these operations are still going on in all the extent they will bear. To press them beyond this, would be to defeat them both now and hereafter. We beg you to be assured, and through you to assure your nation, that among the important reasons which lead us to economise and foster our public credit, a strong one is the desire of preserving to ourselves the means of discharging our debts to them with punctuality and good faith in the terms and sums which have been stipulated between us. Referring to the inclosed report for a more particular development of the obstacles to the proposition, I have &c.

CABINET OPINION ON "POLLY" AND "CATHERINE"

W. MSS.

June 12, 1793.

The President having required the opinions of the heads of the three departments on a letter from Governor Clinton of the 9th inst., stating that he had taken possession of the sloop *Polly*, now called the *Republican*, which was arming and equipping and manning by French and other citizens to cruise against some of the belligerent powers, and desiring what further was to be done, and they having met and deliberated thereon, are unanimously of opinion

that Governor Clinton be desired to deliver over to the civil power the said vessel and her appurtenances to be dealt with according to law; and that the Attorney of the United States for the district of New York be desired, to have such proceedings at law instituted as well concerning the said vessel and her appurtenances, as against the persons, citizens, or aliens participating in the armament or object thereof, as he shall think will be most effectual for punishing the said offenders, and preventing the said vessel and appurtenances from being applied to the destined purpose; and that if he shall be of opinion that no judiciary process will be sufficient to prevent such application of the vessel to the hostile purpose intended, that then the Governor be desired to detain her by force till the further advice of the general government can be taken.

The President having also required the same opinions on the memorial of the British Minister on the 11th inst., on the subject of the British brigantine *Catherine*, captured by the French frigate the *Embuscade* within the limits of the protection of the United States, as is said, and carried into the harbor of New York, they are of opinion unanimously, that the Governor of New York be desired to seize the said vessel in the first instance, and then deliver her over to the civil power, and that the Attorney of the United States for the District of New York be instructed to institute proceedings at law in the proper court, for deciding whether the said capture was made within the limits of the protection of the United States, and for delivering her up to her

owners if it be so decided; but that if it shall be found that no court shall take cognizance of the said question, then the said vessel to be detained by the Governor until further orders of the general government can be had thereon.

TO THE U. S. ATTORNEY FOR NEW YORK (RICHARD HARRISON)

PHILADELPHIA, June 12th 1793.

SIR,—As it was apprehended by the President of the U. S. that attempts might be made by persons within the U. S. to arm and equip vessels for the purpose of cruising against some of the powers at this time engaged in war, whereby the peace of the U. S. might be committed, the Governors of the several States were desired to be on the watch against such enterprises, and to seize such vessels found within the jurisdiction of their States. In consequence of this the Governor of New York has informed the President that he has seized the sloop *Polly* now called the *Republican*, which he found to be arming, equipping, & manning for the purpose of cruising against some of the belligerent powers.

The Governor is hereupon desired to turn the said vessel and her appurtenances over to the civil power: and I am to ask the favor of you to take up the business on the part of the U. S.; instituting such proceedings at law against the vessel and her appurtenances as may place her in the custody of the law, and may prevent her being used for purposes of

hostility against any of the belligerent powers. But if you shall find that no judiciary process will be adequate to this object, then the Governor is desired to detain her by force until further advices can be had from the executive of the General Government.

In the first instance like the present which happened here, the Government, desirous of acting with moderation and of animadverting, through the channel of the laws on as few persons as possible while it was supposed they might have acted without due information, directed prosecutions against such only as were citizens of the U. S.; but the present being a repetition of offence after due notice that it would be proceeded against, you will be pleased to institute such prosecutions before the proper Courts as you shall find most likely to punish according to law all persons, Citizens or Aliens, who had taken such a part in the enterprize commenced as above mentioned, as may be punishable by law.

It has been suggested by the British Minister here, and evidence indeed produced, whereof I send you a copy, that the British Brigantine *Catharine* has been captured by the French frigate the *Embuscade* within the limits of the protection of the U. S. and carried into the harbour of New York. The Governor is hereupon also desired to seize the said Brigantine and deliver her up to the civil power: And I am to ask the favor of you to institute proceedings at law in the proper Court for deciding whether the said Brigantine was taken within the limits of the protection of the U. S., and for delivering her to the owners, if it be so decided. But if you shall find

that no Court will take cognizance of the said question, then the Governor is desired to detain the said Brigantine until further orders can be had thereon from the general government.

In both these cases you will be pleased to have a proper communication and concert with the Governor for the purpose of receiving the vessel from the custody of the military into that of the civil power, and of reinstating her under the military if the civil power should be found inadequate.

In the latter case of the Brigantine *Catharine* be so good as to procure as speedy a determination as possible, in order to lessen inconveniences to the parties having right.

TO THE BRITISH MINISTER (GEORGE HAMMOND) J. MSS.

PHILADELPHIA, June 13th, 1793.

SIR,—Your memorial of the 11th instant, stating that the British brigantine *Catharine* has been taken by the French frigate the *Embuscade* within 2 or 2½ miles of the shores of the U. S. was duly laid before the President, & in consequence thereof the Governor of New York, where the brigantine is understood to be arrived, is desired to take possession of her. It being now supposed that the tribunals of the country will take cognisance of these cases, as far as they involve *acts of force committed within the limits of the protection of the U. S.*, instructions are given to the Governor to turn the case over immediately to the civil power, & to the Attorney of the U. S.

for the district of New York to put it into a proper channel for decision. I am therefore to desire you will be so good as to have the parties interested apprised without delay that they are to take measures as in ordinary civil cases for the support of their rights judicially. Should the decision be in favor of the jurisdiction of the court, it will follow that all future similar cases will devolve at once on the individuals interested to be taken care of by themselves, as in other questions of private property provided for by the laws. The Governors of the several states, as the head of their militia, are desired to aid the civil power should it be necessary. This train of things is much more desirable, for the Executive, whose functions are not analogous to the questions of law & fact produced by these cases, and whose interference can rarely be proper where that of the Judiciary is so.

The Governor of New York, in consequence of circular instructions issued, having informed the President that he had taken possession of a sloop lately called the *Polly*, & now the *Republican:* on evidence that she was armed, equipped, & manned in the port of New York to cruise on the enemies of the French republic, he has been desired to turn that case also over to the civil power, and the attorney for the district is instructed to institute proceedings at law before the proper court for preventing the vessel from being applied to the purpose of her destination, and for punishing all the individuals concerned in the enterprise. I have thought it proper to communicate to you this transaction as it shews

that the measures taken by the executive to prevent these enterprises are likely to be efficacious: The Governors being in these also, desired to interpose the aid of their militia where the power or position of the offenders are beyond the ordinary means of coercion wherewith the civil authority is provided. It was perhaps to be expected that in the first moments of a foreign war the minds of most persons here would be unapprised of the laws of their new positions, and we have little reason to doubt, from the habits of order which characterise our citizens, that a short time will suffice to bring them acquainted with the line they are to pursue, & lessen the occasions of recurrence to the public authority.

TO THE U. S. MINISTER TO FRANCE (GOUVERNEUR MORRIS) J. MSS.

PHILADELPHIA June 13, 1793.

DEAR SIR,—The insulated state in which France is placed with respect to all the world almost by the present war, has cut off all means of addressing letters to you through other countries. I embrace the present occasion by a private individual going to France directly, to mention that since the date of my last public letter, which was April 24, & which covered the President's proclamation of Apr, I have received your Nos. 17 to 24. M. de Ternant notified us of his recall on the 17th of May, & delivered the letter of the Provisory Executive council to that effect. I now inclose you the President's answer to the Council, which you will be pleased to deliver;

a copy of it is also inclosed, open, for your information. Mr. Genet delivered his credentials on the same day on which M. de Ternant took his leave, and was received by the President. He found himself immediately immersed in business, the consequence of this war. The incidents to which that gives daily rise, & the questions respecting chiefly France & England, fills the Executive with business, equally delicate, difficult & disagreeable. The course intended to be pursued being that of a strict & impartial neutrality, decisions, rendered by the President rigorously on that principle, dissatisfy both parties, & draw complaints from both. That you may have a proper idea of them, I inclose you copies of several memorials & letters which have past between the Executive & the ministers of those two countries, which will at the same time develop the principles of the proceedings, & enable you to justify them in your communications should it be necessary. I inclose also the answer given to Mr. Genet on a proposition from him to pay up the whole of the French debt at once. While it will enable you to explain the impracticability of the operation proposed, it may put it in your power to judge of the answers which would be given to any future proposition to that effect, & perhaps to prevent their being brought forward.—The bill lately passed in England prohibiting the business of this country with France from passing through the medium of England is a temporary embarrassment to our commerce, from the unhappy predicament of it's all hanging on the pivot of London. It will be happy for us should it

be continued till our merchants may establish connections in the countries in which our produce is consumed & to which it should go directly.

Our Commissioners have proceeded to the treaty with the North Western Indians. They write however that the treaty will be a month later than was expected. This delay should it be extended will endanger our losing the benefit of our preparations for the campaign, & consequently bring on a delicate question whether these shall be relinquished for the result of a treaty in which we never had any confidence? The Creeks have proceeded in their depredations till they assume the appearance of formal war. It scarcely seems possible to avoid it's becoming so. They are so strong, & so far from us as to make very serious addition to our Indian difficulties. It is very probable that some of the circumstances arising out of our affairs with the Indians, or with the belligerent powers of Europe may occasion the convocation of Congress at an earlier day than that to which it's meeting stands at present.

I send you the forms of the passports given here. The one in three columns is that now used: the other having been soon discontinued. It is determined that they shall be given in our own ports only, & to serve but for one voyage. It has also been determined that they shall be given to all vessels *bonâ fide* owned by American citizens *wholly*, whether built here or not. Our property, whether in the form of vessels, cargoes, or anything else, has a right to pass the seas untouched by any nation, by

the law of nations: and no one has a right to ask where a vessel was built, but where is she owned? To the security which the law of nations gives to such vessels against all nations, are added particular stipulations with three of the belligerent powers. Had it not been in our power to enlarge our national stock of shipping suddenly in the present exigency, a great proportion of our produce must have remained on our hands for want of the means of transportation to market. At this time indeed a great proportion is in that predicament. The most rigorous measures will be taken to prevent any vessel not wholly and *bonâ fide* owned by American citizens from obtaining our passports. It is much our interest to prevent the competition of other nations from taking from us the benefits we have a right to expect from the neutrality of our flag; and I think we may be very sure that few if any will be fraudulently obtained within our ports.

Tho our spring has been cold & wet, yet the crops of small grain are as promising as they have ever been seen. The Hessian fly however to the North, & the weavil to the South, of the Potowmac, will probably abridge the quantity. Still it seems very doubtful whether we shall not lose more for want of the means of transportation, & I have no doubt that the ships of Sweden & Denmark would find full employment here.

TO THE U. S. MINISTER TO GREAT BRITAIN J. MSS.

(THOMAS PINCKNEY)

PHILADELPHIA, June 14, 1793.

DEAR SIR,— * * * I inclose you also several memorials & letters which have passed between the executive & the ministers of France & England. These will develop to you the principles on which we are proceeding between the belligerent powers. The decisions being founded in what is conceived to be rigorous justice, give dissatisfaction to both parties, & produce complaints from both. It is our duty however to persevere in them, and to meet the consequences. You will observe that Mr. Hammond proposes to refer to his court the determination of the President that the prizes taken by the *Citoyen Genet* could not be given up. The reasons for this are explained in the papers. Mr. Genet had stated that she was manned by French citizens. Mr. Hammond had not stated the contrary before the decision. Neither produced any proofs. It was therefore supposed that she was manned principally with French citizens. After the decision Mr. Hammond denies the fact, but without producing any proof. I am really unable to say how it was, but I believe it to be certain there were very few Americans.—He says the issuing the commission &c. by Mr. Genet within our territory was an infringement of our sovereignty; therefore the proceeds of it should be given up to Great Britain. The infringement was a matter between France & us. Had we insisted on any penalty or forfeiture by way of satisfaction to our insulted rights, it would have

belonged to us, not to a third party. As between Great Britain & us, considering all the circumstances explained in the papers, we deemed we did enough to satisfy her.—We are moreover assured that it is the standing usage of France, perhaps too of other nations in all wars, to lodge blank commissions with all their foreign consuls to be given to every vessel of their nation merchant or armed, without which a merchant vessel would be punished as a pirate were she to take the smallest thing of the enemy that should fall in her way. Indeed the place of the delivery of a commission is immaterial. As it may be sent by letter to any one, so it may be delivered by hand to him anywhere. The place of *signature by the sovereign* is the material thing. Were that to be done in any other jurisdiction than his own, it might draw the validity of the act into question. I mention these things, because I think it would be proper that after considering them & such other circumstances as appear in the papers or may occur to yourself, you should make it the subject of a conversation with the minister. Perhaps it may give you an apportunity of touching on another subject. Whenever Mr. Hammond applies to our government on any matter whatever, be it ever so new or difficult, if he does not receive his answer in two or three days or a week, we are goaded with new letters on the subject. Sometimes it is the sailing of the packet which is made the pretext for forcing us into premature & undigested determinations. You know best how far your applications meet such early attentions, and whether you may with propriety claim

a return of them: you can best judge too of the expediency of an intimation that where despatch is not reciprocal, it may be expedient & justifiable that delays should be so. * * *

SECOND OPINION ON NEW LOAN [1]

June 17, 1793.

I cannot see my way clear in the case which the President has been pleased to ask my opinion, but by recurring to these leading questions:

Of the 7,898,999 dollars so borrowed, or rather of the 7,543,912 dollars net proceeds thereof, how much has been applied to the payment of the FOREIGN and *purchase* of the GENERAL debt?

To the balance thereof, which should be on hand, and the two millions of florins now borrowed, is any addition necessary for the *same objects*, for the years 1793, 1794?

The statement furnished by the Secretary of the Treasury does not answer these questions. It only shows what has been done with somewhat less than three millions out of near eight millions of dollars which have been borrowed, and in so doing it takes credit for two sums which are not to come out of this fund, and therefore not to be left in the account. They are the following:

1. A sum of 284,901 dollars 89 cents expended in purchases of the public debt. In the general report

[1] See first opinion under June 5, 1793.

of the trustees of the sinking fund, made to Congress the 23d of February last and printed, it appears, page 29, that the whole amount of money laid out by them was 1,302,407 dollars 64 cents; from which were to be deducted, as is mentioned in the note there subjoined, the purchases made of the interest fund (then about 50,000 dollars as well as I recollect) call the sum paid then 1,252,407 dollars 60 cents. By the Treasury Report, page 38 (new edition), it appears that the surplus of domestic revenue to the end of 1790, appropriated to this object, was 1,374,656 dollars 10 cents; and page 34, that the moneys drawn from Europe on account of the foreign loans, were not the instrument of these purchases; and in some part, to which I am not able to turn, I recollect pretty certainly that it is said these purchases were actually carried to account, as was proper, against the domestic surplus; consequently they are not to be allowed in the foreign account also; or if allowed in this, the sum will then be due from the surplus account, and so must lessen the sum to be borrowed from the sinking fund, which amounts to the same.

2. The first instalment due to the bank—200,000 dollars. Though the first payment of the subscription of the United States to the bank might have been on the first instant, out of the foreign moneys, to be immediately repaid to them by the money borrowed of the bank, yet this useless formality was avoided, and it was a mere operation of the one on paper, without the displacement of a single dollar (see Report, page 12); and in any

event the final reimbursement was never to be made out of the foreign fund, which was appropriated solely to the Payment of the FOREIGN and *purchase* of the GENERAL debt. These two sums, therefore, of 284,901 dollars 89 cents and 200,000 are to be added to the balance of 565,464 dollars 28 cents; subject to future disposition, and will make 1,050,386 17 cents actually here and still to be applied to the proper appropriation.

However, this account, as before observed, being only a part of the moneys borrowed, no judgment can be formed from it of the expediency of borrowing more; nor should I have stopped to make a criticism on it, but to show why no such sums as the two above mentioned were inserted in the general account sketched for the President, June 5. I must add, that the miscellaneous sum of 49,000 dollars in this account is probably covered by some other articles of that, as far as it is chargeable in this fund; because that account, under one form or another, takes up all the articles chargeable in this fund which had appeared in the printed reports. I must therefore proceed to renew my statement of June 5, by inserting therein the first instalment of the Dutch loan of 484,000 dollars 40 cents, payable this month, which not having been mentioned in any of the reports heretofore published, was noticed in no statement. I will add a like sum for the year 1794, because I think we should now prepare for the of that year.

As the Secretary of the Treasury does not seem to contemplate the purchasing any fixed sum for the

sinking fund, I shall leave that article of the account, add to its result any sum he may decide to have purchased to that fund.

THE TRUST FOR LOANS, *Dr.*

To net amount of loans to June 1, 1792 . . . . . 755,912 dollars.
the loan now going for 2,000,000 florins.

Cr.

By charges on remittance to France,
By reimbursement to Spain,
By interest paid to foreign officers,
By amount of French debt, principal and interest, payable to end of year 1791,
By do. for 1792,
By do. for 1793,
By first instalment of Dutch debt, 1st June, 1793,
By instalments and interest to France for 1794,
By instalment to Holland for 1794,
Balance will then remain in hands of the Trust,
$

So that it appears there will be a balance in the hands of the Trust—the clear sum of 499,393 dollars 84 cents—were no moneys to be furnished in the mean time to the sinking fund. But should the President determine to furnish that, with the 90,000 dollars proposed in my statement of June 5, then a loan would be necessary for about 405,000 dollars—in near round numbers, 1,000,000 of guilders, in

addition to the 2,000,000 now borrowing. I am, *individually*, of opinion that that sum ought to be furnished to the sinking fund, and consequently that an additional loan to this extent should be made, considering the subject in a *legal point of view* only. The reasons in favor of the extensions are:

The apprehension of the extension of our war to other Indian nations, and perhaps to Europe itself. The disability this might produce to borrow at all [this is in my judgment a weighty consideration].

The possibility the government of France may become so settled, as that we may hazard the anticipation of payment, and so avoid dead interest.

The reasons against it are:

The possibility that France may continue for some time yet so unsettled as to render an anticipation of payments hazardous.

The risk of losing the capital borrowed, by a successful invasion of the country of deposit, if it be left in Europe; or by an extension of the bankruptcies now shaking the most solid houses; and when and where they will end we know not.

Loss of interest on the dead sum, if the sum itself be safe.

The execution of a power for one object, which was given to be executed for a very different one.

The commitment of the President, on this account, to events, or to the criticisms of those who, though the measure should be perfectly wise, may misjudge it through error or passion.

The apprehension that the head of the department means to provide idle money to be lodged in the

banks ready for the corruption of the next legislature, as it is believed the late ones were corrupted, by gratifying particular members with vast discounts for objects of speculation.

I confess that the last reasons have most weight with me.

CABINET OPINION ON FRENCH PRIVATEERS

J. MSS.

June 17, 1793.

At a meeting of the heads of departments at the President's this day, on summons from him, a letter from Mr. Genet of the 15th inst. addressed to the Secretary of state on the subject of the seizure of a vessel by the Governor of New York, as having been armed, equipped & manned in that port, with a design to cruize on the enemies of France, was read, as also the draught of an answer prepared by the Secretary of state which was approved.

Read, also, a letter of June 14th from Mr. Hammond to the Secretary of state, desiring to know whether the French privateers, the *Citizen Genet*, & *Sans culottes*, are to be allowed to return or send their prizes into the ports of the U. S. It is the opinion that he be informed that they were required to depart to the dominions of their own sovereign, and nothing expressed as to their ulterior proceedings; & that in answer to that part which states that the *Sans culottes* has increased its force in the port of Baltimore, & remained there in the avowed intention of watching the motions of a valuable ship now lying there, it be answered that we expect the speedy de-

parture of those privateers will obviate the inconveniences apprehended, & that it will be considered whether any practical arrangements can be adopted to prevent the augmentation of the force of armed vessels.

T. J. A. H. H. K.

TO THE FRENCH MINISTER (EDMOND CHARLES GENET) J. MSS.

PHILADELPHIA June 17, 1793.

SIR,—I shall now have the honor of answering your letter of the 15th instant, and so much of that of the 14th (both of which have been laid before the President) as relates to a vessel armed in the port of New York and about to depart from thence, but stopped by order of the Government. And here I beg leave to premise, that, the case supposed in your letter, of a vessel arming for her own defence, and to repel unjust aggressions, is not that in question, nor that on which I mean to answer, because not having yet happened, as far as is known to the Government, I have no instructions on the subject. The case in question is that of a vessel armed, equipped, and manned in a port of the United States, for the purpose of committing hostilities on nations at peace with the United States.

As soon as it was perceived that such enterprises would be attempted, orders to prevent them, were dispatched to all the States and ports of the Union. In consequence of these, the Governor of New York, receiving information that a Sloop, heretofore called

the *Polly*, now the *Republican*, was fitting out, arming, and manning in the port of New York, for the express and sole purpose of cruising against certain nations, with whom we are at peace; that she had taken her guns and ammunition aboard and was on the point of departure, seized the vessel. That the Governor was not mistaken in the previous indications of her object, appears by the subsequent avowal of the citizen Hauterieve, consul of France at that port, who, in a letter to the Governor, reclaims her as "Un vaisseau armé en guerre, et pret à mettre à la voile," and describes her object in these expressions: "Cet usage etrange de la force publique contre les citoyens d'une nation amie qui se reunissent ici *pour aller defendre leur frères*," &c. and again "Je requiers, monsieur, l'autorité dont vous etes revetu, pour faire rendre à des Français, à des alliés &c. la liberté *de voler au secours de leur patrie*." This transaction being reported to the President, orders were immediately sent to deliver over the vessel, and the persons concerned in the enterprise to the tribunals of the Country, that if the act was of those forbidden by the Law, it might be punished, if it was not forbidden, it might be so declared, and all persons apprized of what they might or might not do.

This we have reason to believe is the true state of the case, and it is a repetition of that which was the subject of my letter of the 5th instant, which animadverted not merely on the single fact of the granting commissions of war, by one nation, within the territory of another, but on the aggregate of the facts; for it states the Opinion of the President to

be "That the arming and equipping vessels in the ports of the United States, to cruise against nations with whom we are at peace, was incompatible with the sovereignty of the United States; that it made them instrumental to the annoyance of those nations, and thereby tended to commit their peace"— and this opinion is still conceived to be not contrary to the principles of natural law, the usage of nations, the engagements which unite the two people, nor the proclamation of the President, as you seem to think.

Surely not a syllable can be found in the last mentioned instrument, permitting the preparation of hostilities in the ports of the United States. It's object was to enjoin on our citizens "a friendly conduct towards all the belligerent powers," but a preparation of hostilities is the reverse of this.

None of the engagements in our treaties stipulate this permission. The XVIIth article of that of commerce, permits the armed vessels of either party, to enter the ports of the other, and to depart with their prizes freely: but the entry of an armed vessel into a port, is one act; the equipping a vessel in that port, arming her, manning her, is a different one, and not engaged by any article of the Treaty.

You think, Sir, that this opinion is also contrary to the law of nature and usage of nations. We are of opinion it is dictated by that Law and usage; and this had been very maturely inquired into before it was adopted as a principle of conduct. But we will not assume the exclusive right of saying what that law and usage is. Let us appeal to enlightened and

disinterested Judges. None is more so than Vattel. He says L. 3. §. 104. "Tant qu'un peuple neutre veut jouir surement de cet état, il doit montrer en toutes choses une exacte impartialité entre ceux qui se font la guerre. Car s'il favorise l'un au préjudice de l'autre, il ne pourra pas se plaindre, quand celui-ci le traitera comme adhérent & associé de son ennemi. Sa neutralité seroit une neutralité frauduleuse, dont personne ne veut être la dupe.—Voyons donc en quoi consiste cette impartialité qu'un peuple neutre doit garder.

"Elle se rapporte uniquement à la guerre, & comprend deux choses. 1°. Ne point donner de secours quand on n'y est pas obligé; ne fournir librement ne troupes, ni armes, ni munitions, ni rien de ce qui sert directement à la guerre. Je dis *ne point donner de secours*, & non pas *en donner egalement;* car il seroit absurde qu'un Etat secourût en même tems deux ennemis. Et puis il seroit impossible de la faire avec egalité; les mêmes choses, le même nombre de troupes, la même quantitié d'armes, de munitions, &c. fournies en des circonstances differentes, ne forment plus des secours equivalents." &c. If the neutral power may not, consistent with it's neutrality furnish men to either party, for their aid in war, as little can either enrol them in the neutral territory, by the law of nations. Wolf §. 1174, Says, "Puisque le droit de lever des soldats est un droit de majesté, qui ne peut être violé par une nation etrangere, il n'est pas permis de lever des soldats sur le territorie d'autrui, sans le consentement du maître du territorie." And Vattel before cited L. 3. §. 15. "Le

droit de lever des soldats appartenant uniquement à la nation, ou au souverain, personne ne peut en envoler en pays etranger sans la permission du souveraine:—Ceux qui entre prenant d'engager des soldats en pays etranger sans la permission du Souverain, et en general quiconque débauche les sujets d'autrui, viole un des droits les plus sacrés du prince & de la nation. C'est le crime qu'on appelle *plagiat*, ou vol d'homme. Il n'est aucun Etat police qui ne le punisse tres sévérement." &c. For I chuse to refer you to the passage, rather than follow it thro' all its developments. The testimony of these, and other writers, on the law and usage of nations, with your own just reflections on them, will satisfy you that the United States in prohibiting all the belligerent powers from equipping, arming, and manning vessels of war in their ports, have exercised a right, and a duty with justice, and with great moderation. By our treaties with several of the belligerent powers, which are a part of the laws of our land, we have established a state of peace with them. But without appealing to treaties, we are at peace with them all by the law of nature. For by nature's law, man is at peace with man, till some aggression is committed, which, by the same law, authorizes one to destroy another as his enemy. For our citizens then, to commit murders and depredations on the members of nations at peace with us, or combine to do it, appeared to the Executive, and to those with whom they consulted, as much against the laws of the land, as to murder or rob, or combine to murder or rob it's own citizens, and as much to require pun-

ishment, if done within their limits, where they have a territorial jurisdiction, or on the high seas, where they have a personal jurisdiction, that is to say, one which reaches their own citizens only, this being an appropriate part of each nation on an element where all have a common jurisdiction. So say our laws as we understand them ourselves. To them the appeal is made, and whether we have construed them well or ill, the constitutional Judges will decide. Till that decision shall be obtained, the Government of the United States must pursue what they think right with firmness, as is their duty. On the first attempt that was made the President was desirous of involving in the censures of the law as few as might be. Such of the individuals only therefore as were citizens of the United States, were singled out for prosecution. But this second attempt being after full knowledge of what had been done on the first, and indicating a disposition to go on in opposition to the laws, they are to take their course against all persons concerned, whether citizens, or aliens; the latter, while within our Jurisdiction and enjoying the protection of the laws, being bound to obedience to them, and to avoid disturbances of our peace within, or acts which would commit it without, equally as Citizens are.

TO THE FRENCH MINISTER J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA June 17, 1793.

SIR,—I have received and laid before the President, your letter of the 14th instant, stating that

certain judiciary Officers of the United States, contrary to the law of nations, and to the treaties subsisting between France and the United States, had arrested certain Vessels and Cargoes taken by a French armed vessel and brought into this port, and desiring that the authority of the President might be interposed to restore the prizes with the damages for their detention.

By the laws of this country every individual claiming a right to any Article of property, may demand process from a court of Justice, and decision on the validity of his claim. This is understood to be the case, which is the subject of your letter. Individuals claiming a right to the prizes, have attached them by process from the court of admiralty, which that Court was not free to deny, because justice is to be denied to no man. If, at the hearing of the cause, it shall be found that it is not cognizable before that court, you may so far rely on its learning and integrity as to be assured it will so pronounce of itself. In like manner, if, having jurisdiction of the causes, it shall find the right of the claimants to be null, be assured it will pronounce that nullity, and, in either case the property will be restored; but whether with damages or not, the court alone is to decide. It happens in this particular case that the rule of decision will be, not the municipal laws of the United States but the law of nations, and the Law maritime, as admitted and practised in all civilized countries; that the same sentence will be pronounced here that would be pronounced in the same case in the Republic of France, or in any other country of

Europe; and that if it should be unfavorable to the captors, it will be for reasons understood and acknowledged in your own country, and for the justice of which we might safely appeal to the Jurists of your own country. I will add that if the seizure should be found contrary to the treaties subsisting between France and the United States, the Judges will consider these treaties as constituting a conventional Law for the two nations, controuling all other laws, and will decree accordingly.

The functions of the Executive are not competent to the decision of Questions of property between Individuals. These are ascribed to the Judiciary alone, and when either persons or property are taken into their custody, there is no power in this country which can take them out. You will therefore be sensible, Sir, that though the President is not the Organ for doing what is just in the present case, it will be effectually done by those to whom the constitution has ascribed that duty, and be assured that the interests, the rights and the dignity of the French nation will receive within the Bosom of the United States all the support which a friendly nation could desire, and a natural one yield.

TO THE FRENCH MINISTER J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA, June 19, 1793.

SIR,—According to the desire expressed in your letter of the 14th instant, the President will give the

instructions necessary for the settlement of the instalments of principal and interest, still due from the United States to France. This is an act equally just and desirable for both parties; and although it had not been imagined that the materials for doing it were to be had here at this moment, yet we shall be pleased to find that they may. In the mean time, what is further to be done, will doubtless be the subject of further reflection and inquiry with you; and particularly the operation proposed in your letter will be viewed under all its aspects. Among these, we think it will present itself as a measure too questionable, both in principle and practicability, too deeply interesting to the credit of the United States, and too unpromising in its result to France, to be found eligible to yourself.[1] Finally, we rest secure that what is of mutual concern will not be done but with mutual concert.

TO THE FRENCH MINISTER[2] J. MSS.

(EDMOND CHARLES GENET)

June 19th, 1793.

SIR,—I have the honor of yours of the 19th instant. In mine of the same date I had that of stating to you the fact of the President's requisition

[1] Genet proposed to give "assignments" of the United States' debt to France to merchants in payment for produce.

[2] This letter was submitted to Hamilton and Knox in the following letter:

"June 19, 1793.

"Th: Jefferson has the honor to inclose to the Secretaries of the Treasury & war, draughts of two letters of this day's date to the Ministers of France and England. He confesses himself not satisfied

to the privateers in question. The developement of it's terms & the inferences from them [are open to all, or may be left][1] to the occasion which shall call for them. Such occasion may never happen; but, if it does, the [President's justice][2] is a security that that will be done which shall be right.

TO THE BRITISH MINISTER[3] J. MSS.

(GEORGE HAMMOND)

PHILADELPHIA June 19, 1793.

Sir,—I had the honour to address you a letter on the 29th of May was twelvemonth on the articles still unexecuted of the treaty of peace between the two nations. The subject was extensive & important & therefore rendered a certain degree of delay in the reply to be expected. But it has now become such as naturally to generate disquietude. The interest we have in the Western posts, the blood and treasure which their detention costs us daily, cannot but produce a corresponding anxiety on our part. Permit me therefore to ask when I may expect the

with the letter altogether, as it has somewhat of the appearance of evasion. The gentlemen will be pleased to propose any alterations either may desire, handing the letters round to him to be finally submitted to the President."

At the foot of his letter is written, in their own handwritings:

"Approved A. Hamilton
Approved H. Knox."

[1] Here Hamilton has written in the margin: "Will it is conceived be most properly referred."

[2] Here Hamilton has written in the margin: "Disposition which has been manifested."

[3] See note to preceding letter, and the Cabinet opinion following.

honour of a reply to my letter, and to assure you of the sentiments of respect with which I have the honour to be Sir, Your most obedient & most humble servt.

CABINET OPINION ON SPANISH AFFAIRS

June 20., 1793.

At a meeting this day of the heads of deparmts at the Prest's on summons from him, a lre from Messrs. Viar & Jaudenes dated June 18. & addressed to the Secy of state was read; whereupon it is the opn that a full detail of the proceedgs of the U. S. with respect to the Southern Indns & the Spands be prepared, & a justificn as to the particular matters charged in the sd lre, that this be sent with all the necessary documts, to our Commrs at the ct of Madrid with instns to them to communicate the same to the ct. of Madrid leavg to them a discretion to change expressions in it which to them may appear likely to give offence in the circumstances under which they may be at the time of receivg it, & that a copy be sent to Mr. Pinckney for his informn, & to make such use of the matter it contains as to him shd seem expedt; that an answer be written to Messrs. V. and J. informg them that we shall convey our sentimts on the subject to their court thro' our commrs at Madrid & letting them see that we are not insensible to the style & manner of their communications.

A draught of a ltre from the Secy of state to Mr. Hammond, asking when an answer to his ltre of

May 29. 1792 might be expected, was read & approved.

TO THE FRENCH MINISTER J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA, June 23, 1793.

SIR,—In answer to your letter of the 18th instant on the subject of the bills drawn by the administration of St. Domingo, in favor of certain citizens of the United States, I am instructed to inform you, that the funds therein mentioned have been so clearly understood, on all hands, to be specially appropriated for the payment of the bills which were recognized by the former agents of France here, as to be incapable of being diverted, without disappointing the just expectations of our citizens, holders of those bills.

Indeed the Government has been so much a party in countenancing those expectations, as, in such an event, to lie under an obligation, in point of propriety, to satisfy the parties themselves to the extent of the balance which yet remains to be advanced.

TO JAMES MADISON J. MSS.

June 23, 1793.

DEAR SIR,—My last was of the 17th. if I may reckon a single line anything. Yours of the 13th came to hand yesterday. The proclamn as first proposed was to have been a declaration of neutrality. It was opposed on these grounds. 1. That a declara-

tion of neutrality was a declaration there should be no war, to which the Executive was not competent. 2. That it would be better to hold back the declaration of neutrality, as a thing worth something to the powers at war, that they would bid for it, & we might reasonably ask a price, the *broadest privileges* of neutral nations. The 1st objection was so far respected as to avoid inserting the term *neutrality* & the drawing the instrument was left to E. R. That there should be a proclamn was passed unanimously with the approbation or the acquiescence of all parties. Indeed it was not expedient to oppose it altogether, lest it should prejudice what was the next question, the boldest & greatest that ever was hazarded, and which would have called for extremities, had it prevailed. Spain is unquestionably picking a quarrel with us. A series of letters from her commissioners here prove it. We are sending a courier to Madrid. The inevitableness of war with the Creeks, and the probability, I might say the certainty of it with Spain (for there is not one of us who doubts it,) will certainly occasion your convocation, at what time I cannot exactly say, but you should be prepared for this important change in the state of things.—The President is got pretty well again. He sets off this day to Mount Vernon & will be absent a fortnight. The death of his manager, hourly expected, of a consumption, is the call. He will consequently be absent on the 4th of July. He travels in a Phaeton & pair. Doctr Logan sends you the inclosed pamphlet Adieu. Yours affectionately.

TO THOMAS MANN RANDOLPH J. MSS.

PHILADELPHIA June 24. 1793.

DEAR SIR,—I have to acknowledge your two favors of May 31. & June 13. I was so much pressed the last week on the post-day that it was impossible for me to write. The President is at this time gone to Mount Vernon, for a few days only. Maria has the mumps in the city, so that she has not been with me for a week past. She had it favorably. The person engaged for me as a manager, came up from Elkton to see me the last week. He is not yet certain on the subject of tenants, his mother, who had decided to go as one, having met an advantageous situation at home, & his cousin, whom I formerly wrote you was gone to see the place, having been intercepted by another offer. He still thinks he shall get some, & is to let me know definitively by the last of August. The time of the tenants' removing in Maryland is not till March. This man is about 30. years of age, of not a very bright appearance, but seems as if he would be docile, so that I hope to get my own outlines followed by him. He agrees in condemning Indian corn & hogs, and in preferring the potatoe & clover to every other means of feeding all kinds of stock, even horses. If he does not get tenants for my lands on the East side of the river I shall perhaps propose to Clarkson to go there, unless I could find a person more kind to the labourers & with a smaller family. In the mean time it would be better he should know nothing of my arrangements, unless indeed he were to have an offer elsewhere, which I would not chuse he should lose.—The

late accounts from France give us hopes that Du Mouriez's desertion has had no other effect than to derange that army awhile, whilst it shews the unshaken republicanism of the army & people. Their internal insurrections do not wear the face they were made to assume. They seem to have been confined chiefly to Brittany, where the noblesse was more numerous than the people, and turned against the revolution from the moment of suppressing titles. There was a considerable insurrection there before I left France. The French have been guilty of great errors in their conduct towards other nations, not only in insulting uselessly all crowned heads, but endeavoring to force liberty on their neighbors in their own form. They seem to be correcting themselves in the latter point. The war between them and England embarrasses our government daily & immensely. The predilection of our citizens for France renders it very difficult to suppress their attempts to cruize against the English on the ocean, and to do justice to the latter in cases where they are entitled to it.—I begin to be uneasy at not receiving my threshing machine. It cannot now be on time for this harvest. My fear is that it may have been in some vessel which is captured. I condole with you on the misfortunes of your garden. From a feeling of self interest I would propose a great provision of Celery plants to be made. My love to my dear Martha, & am Dear Sir, most affectionately yours.

TO THE FRENCH MINISTER J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA, June 25, 1793.

SIR,—In the absence of the President of the United States, I have consulted with the Secretaries of the Treasury and War, on the subject of the ship *William*, and generally of vessels suggested to be taken within the limits of the protection of the United States, by the armed vessels of your nation, concerning which I had the honor of a conversation with you yesterday, and we were so well assured of the President's way of thinking in these cases, that we undertake to say it will be more agreeable to him, that such vessels should be detained under the orders of yourself, or of the consuls of France in the several ports, until the Government of the United States shall be able to inquire into, and decide on, the fact. If this arrangement should be agreeable to you, and you will be pleased to give the proper orders to the several consuls of your nation, the Governors of the several States will be immediately instructed to desire the consul of the port to detain vessels on whose behalf such suggestions shall be made, until the Government shall decide on their case. It may sometimes, perhaps, happen, that such vessels are brought into ports where there is no consul of your nation resident or within any convenient distance. In that case, the Governors would have to proceed to the act of detention themselves, at least until a consul may be called.

TO THE BRITISH MINISTER J. MSS.
(GEORGE HAMMOND)

PHILADELPHIA, June 26, 1793.

SIR,—The Government here has received complaint that the *Snow Suckey* belonging to George Makepeace a citizen of the United States, with her cargo, belonging chiefly to Peter Le Maigre, and wholly to citizens of the United States, and not at all of the character of contraband, commanded by Anthony Underhill a citizen also of the United States, and bound from the Port of Philadelphia to Port au Prince, was on his way thither on the 8th of May last, taken by an English privateer Brig called the *Maria*, of Kingston in the Island of Jamaica, commanded by a Captain McIver, who immediately put the Captain of the said *Snow* on board a vessel, accidentally met with at sea, in order to deprive her of her proper patron and Defender. The persons interested propose immediately to send an Agent properly authorised, in quest of their vessel and cargo. They mean to go in the first place to Jamaica.

I have the honor to enclose you copies of their papers establishing the facts, and to ask the aid of your letters, either open or closed directed to such persons in authority in Jamaica, or elsewhere, as you may think proper, recommending to their patronage the previous proceedings of the said Agent, so far as shall be just, for the recovery of the property taken. And as doubtless the laws of the place will have provided for the punishment of the offenders, I trust that your government will make a point of bringing them to justice, if the case should really

prove to be as it is represented in order to ensure to the commerce and navigation of peaceable nations that freedom from interruptions to which they are entitled.

Your interposition cannot but be the more effectual in the present case as the principal Owner of the Cargo is a long established and well-known Merchant of reputation of this place; and it would be easy for you to satisfy yourself in the most perfect manner of the property of the vessel and cargo.

The distance, and consequence of delay which would attend the sending of this complaint to the Government of England, and the probable escape of the persons and property, if so much time were given for it has insured me to presume on your concurrence in this more speedy method of pursuit.

TO THE GOVERNOR OF VIRGINIA V. S. A.

(HENRY LEE)

PHILADELPHIA, June 28, 1793.

DEAR SIR,—I should much sooner have answered your favor of the 15th of May on the subject of a Mace, by sending you the inclosed design of Dr. Thornton, whose taste and inspiration are both good; but that I have not myself been satisfied with the introduction of the rattlesnake into the design. There is in man as well as brutes, an antipathy to the snake, which renders it a disgusting object wherever it is presented. I would myself rather adopt the Roman staves & axe, trite as it is; or perhaps a sword, sheathed in a roll of parchment, (that

is to say an imitation in metal of a roll of parchment), written over, in the raised Gothic letters of the law, with that part of the constitution which establishes the house of representatives, for that house, or the Senate, for the Senate, however if you have that same disgust for the snake, I am sure you will yourself imagine some better substitute; or perhaps you will find that disgust overbalanced by stronger considerations in favor of the emblem.

DRAFT OF A LETTER TO THE BRITISH MINISTER

J. MSS.

[After June 20, 1793.]

SIR,—In a letter of Feb. 2. 1792, I had the honor of conveying to you the President's sentiments on the assurances you had then been pleased to give of the strict neutrality of your government between us & the Indians in our neighborhood. You do to that testimony but the justice which it merits in not allowing yourself for a moment to infer from the passage in my letter of the 19th inst. quoted in yours of the 20th a meaning which would be disrespectful to your nation.—Were the Western posts in our possession, it cannot be doubted but there would be an end to the murders daily committed by the Indians on our North Western frontier & to a great part of the expence of our armaments in that quarter. [My expression therefore was scrupulously exact that the detention of these posts is the cause of these murders and expences, and I thank you sincerely for the justice you have done me in not imagining a

meaning as foreign from the direct import of the words, as from my mind in using them][1]

TO JAMES MONROE J. MSS.

PHILADELPHIA, June 28, 1793.

DEAR SIR,—I have to acknolege your favor of May 28. I believe that through all America there has been but a single sentiment on the subject of peace & war, which was in favor of the former. The Executive here has cherished it with equal & unanimous desire. We have differed perhaps as to the tone of conduct exactly adapted to the securing it. We have as yet no indications of the intentions or even the wishes of the British government. I rather believe they mean to hold themselves up, & be led by events. In the mean while Spain is so evidently *picking a quarrel* with us, that we see a war absolutely inevitable with her. We are making a last effort to avoid it, but our cabinet is without any division in their expectations of the result. This may not be known before the last of October, earlier than which I think you will meet. You should therefore calculate your domestic measures on this change of position. If France collected within her own limits, shall maintain her ground there steadily, as I think she will, (barring the effect of famine which no one can calculate,) and if the bankruptcies of

[1] In the margin in Hamilton's writing is added:

"Instead of the Passage between [ ] These inconveniences, therefore, are connected as consequences, with the Detention of our Posts; to convey which idea alone was the intention of the expressions to which you refer."

England proceed to the length of an universal crush of their paper, which I also think they will, she will leave Spain the bag to hold; she is emitting assignats also, that is to say Exchequer bills, to the amount of 5. millions English, or 125. millions French: and these are not founded on land as the French assignats are, but on pins, thread, buckles, hops, & whatever else you will pawn in the exchequer of double the estimated value. But we all know that 5. millions of such stuff forced for sale at once on the market of London, where there will be neither cash nor credit, will not pay storage. This paper must rest then ultimately on the credit of the nation as the rest of their public paper does, & will sink with that. If either this takes place, or the confederacy is unsuccessful, we may be clear of war with England.—With respect to the increase of our shipping, our merchants have no need, you know, of a permission to buy up foreign bottoms. There is no law prohibiting it, and when bought they are American property, & as such entitled to pass freely by our treaties with some nations, & by the law of nations with all. Such accordingly, by a determination of the Executive, will receive American passports. They will not be entitled indeed to import goods on the low duties of *home-built* vessels, the laws having confined that privilege to these only. We have taken every possible method to guard against fraudulent conveyances, which, if we can augment our shipping to the extent of our own carriage, it would not be our interest to cover.

I enclose you a note from Freneau, explaining the interruption of your papers.—I do not augur well of

the mode of conduct of the new French minister; I fear he will enlarge the circle of those disaffected to his country. I am doing everything in my power to moderate the impetuosity of his movements, and to destroy the dangerous opinion which has been excited in him, that the people of the U S. will disavow the acts of their government, and that he has an appeal from the Executive to Congress, & from both to the people.—Affairs with the Creeks seem to present war there as inevitable, but it will await for you. We have no news from the Northern commissioners, but of the delay likely to be attempted by the Indians; but as we never expected peace from the negotiation, I think no delay will be admitted which may defeat our preparations for a campaign.

Crops here are likely to be good, tho' the beginning of the harvest has been a little wet.—I forgot whether I informed you that I had chosen a house for you, and was determined in the choice by the Southern aspect of the back buildings, the only circumstance of difference between the two presented to my choice. Give my best love to mrs. Monroe, & be assured of the affectionate esteem of, Dr Sir, your friend & servant.

TO DOCTOR GEORGE GILMER J. MSS.

PHILADELPHIA June 28. 1793.

DEAR DOCTOR,—I give you sincere joy on the physical energies of which you have lately (or rather Mrs. Gilmer for you) produced such a living proof. I hope they will be repeated for years to come.

Dumouriez was known to be a scoundrel in grain. I mentioned this from the beginning of his being placed at the head of the armies; but his victories at length silenced me. His apostacy has now proved that an unprincipled man, let his other fitnesses be what they will, ought never to be employed. It has been proved true that the French army, as well as nation, can not be shaken in their republicanism. Dumouriez's popularity put it to as severe a proof as could be offered. Their steadiness to their principles ensures the issue of their revolution against every effort but by the way of famine. Should that take place the effect would be incalculable; because our machine, unsupported by food, is no longer under the controul of reason. This crisis however is now nearly over, as their harvest is by this time beginning. As far as the last accounts come down, they were retiring to within their own limits, where their assignats would do for money (except at Mentz). England too is issuing her paper, not founded, like the assignats, on land, but on pawns of thread, ribbons, buckles, &c. They will soon learn the science of depreciation, and their whole paper system vanish into the nothing on which it is bottomed. My affectionate respects to mrs. Gilmer & am Dear Doctor yours sincerely.

TO JAMES MADISON MAD. MSS.

June 29. 1793.

I wrote you on the 23^{d} and yesterday I received yours of the 17th which was the more welcome as it

acknolged mine of the 9th about the safety of which I was anxious. I now risk some other papers, the sequel of those conveyed in that. The result I know not. We are sending a courier to Madrid to make a last effort for the preservation, of honorable peace. The affairs of France are recovering their solidity: and from the steadiness of the people on the defection of so popular & capital a commander as Dumouriez, we have a proof that nothing can shake their republicanism. Hunger is to be excepted; but the silence of the late papers on that head & the near approach of harvest makes us hope they will weather that rock. I do not find that there has been serious insurrection but in Brittany, and there, the noblesse having been as numerous as the people, & indeed being almost the people, the counter revolutionary spirit has been known always to have existed since the night in which titles were suppressed. The English are trying to stop the torrent of bankruptcies by an emission of 5. millions of Exchequer bills, to be loaned on the pawn-broking plan: consequently much inferior to the assignats of France. But that paper will sink to an immediate level with their public paper, & consequently can only complete the ruin of those who take it from government at par, & on a pledge of pins, buckles &c of double value, which will not sell so as to pay storage in a country where there is no specie, and now we may say no paper of confidence. Every letter which comes expresses a firm belief that the whole paper system will now vanish into that nothing on which it is bottomed. For even the public faith is nothing,

as the mass of paper bottomed on it is known to be beyond it's possible redemption. I hope this will be a wholesome lesson to our future legislature. The war between France and England has brought forward the Republicans & Monocrats in every state so openly, that their relative numbers are perfectly visible. It appears that the latter are as nothing. H. is endeavoring to engage a house in town for the next year. He is in the country for the summer. * * *

P. S. June 30. Since writing the above yours of June 19. is received. A Portico may be from 5. to 10. diameters of the column deep. or projected from the building. If of more than 5. diameters there must be a column in the middle of each flank, since it must never be more than five diameters from center to center of column. The Portico of the maison quarrée is 3. intercolonnations deep. I never saw as much to a private house.—The Commissioners (Irvine &c.) yesterday delivered in their books & accounts, so that that business is closed. The result not yet known in Fenno's paper of yesterday. You will see a piece signed pacificus [1] in defence of the proclmn. You will readily know the pen. I *know* it the more readily because it is an amplification only of the topics urged in discussing the question when first proposed. The right of the *Executive* to declare that we are *not bound to execute the guarantee* was then advanced by him and denied by me. No other opinion expressed on it. In this paper he repeats it, & even considers the proclamation as such a declara-

[1] By Alexander Hamilton.

tion, but if any body intended it as such (except himself) they did not then say so.—The passage beginning with the words "the answer to this is" &c. is precisely the answer he gave at the time to my objection that the Executive had no authority to issue a declaration of neutrality, nor to do more than declare the actual state of things to be that of peace. —"for until the new government is acknoleged the treaties &c. are of course suspended." This also is the sum of his arguments the same day on the great question which followed that of the proclamn, to wit Whether the Executive might not, & ought not to declare the treaties suspended. The real milk and water views of the proclamn appeared to me to have been truly given in a piece published in the papers soon after, & which I knew to be E. R's from it's exact coincidence with what he has expressed. Upon the whole, my objections to the competence of the Executive to declare neutrality (that being understood to respect the future) were supposed to be got over by avoiding the use of that term. The declaration of the disposition of the U S. can hardly be called illegal, tho' it was certainly officious & improper. The truth of the fact lent it some cover. My objections to the impolicy of a premature declaration were answered by such arguments as timidity would readily suggest. I now think it extremely possible that Hammond might have been instructed to have asked it, & to offer the *broadest neutral privileges*, as the price, which was exactly the price I wanted that we should contend for.—But is it not a miserable thing that the three heresies I have

above quoted from this paper, should pass unnoticed & unanswered, as these certainly will? for none but mere bunglers & brawlers have for some time past taken the trouble to answer any thing.— The Probationary odes (written by S. G. T.[1] in Virga) are saddled on poor Freneau, who is bloodily attacked about them.

TO THE FRENCH MINISTER
(EDMOND CHARLES GENET)

PHILADELPHIA, June 29, 1793.

SIR,—The persons who reclaimed the ship *William* as taken within the limits of the protection of the United States, having thought proper to carry their claim first into the courts of admiralty, there is no power in this country which could take the vessel out of the custody of that court, till it should decide, itself, whether it had jurisdiction or not of the cause; having now decided that it has not jurisdiction, the same complaint is lodged with the Executive.

I have the honor to enclose you the testimony whereon the complaint is founded. Should this satisfy you that it is just, you will be so good as to give orders to the consul of France at this port, to take the vessel into his custody and deliver her to the owners. Should it be over-weighed in your judgment, by any contradictory evidence, which you have, or may acquire, I will ask the favor of a communication of that evidence, and that the consul retain the vessel in his custody until the Executive

[1] St. George Tucker.

of the United States shall consider and decide finally on the subject.[1]

TO THE FRENCH MINISTER (EDMOND CHARLES GENET) J. MSS.

PHILADELPHIA, June 30, 1793.

SIR,—I have to acknowledge the receipt of your favor of the 25th instant, on the subject of vessels belonging to the enemies of France, which have procured arms within our ports for their defence. Those from Charleston and Philadelphia have gone off before it was known to the Government, and the former, indeed, in the first moments of the war, and before preventive measures could be taken in so distant a port. The day after my receipt of your letter, the communications now enclosed from the Governor of Maryland came to hand, and prevented our interference on the subject of the *Trusty*, captain Hale, a vessel loaded with flour and lumber, and bound to Barbadoes. You will perceive by the

[1] On the same day Jefferson again wrote:

"SIR,—A complaint is lodged with the Executive of the United States, that the *Sans Culottes*, an armed privateer of France, did, on the 8th of May last, capture the brigantine *Fanny*, within the limits of the protection of the United States, and sent the said brig as a prize into this port, where she is now lying.

"I have the honor to enclose you the testimony whereon the complaint is founded. Should this satisfy you that it is just, you will be so good as to give orders to the consul of France at this port, to take the vessel into his custody, and deliver her to the owners. Should it be over-weighed, in your judgment, by any contradictory evidence which you have, or may acquire, I will ask a favor of a communication of that evidence, and that the consul retain the vessel in his custody, until the Executive of the United States shall consider and decide finally on the subject."

papers, that the Governor of Maryland had got information that she was buying guns, and had given orders for the examination of the fact, but that she got off before the officer could get on board, having cleared out three or four days before. It appears that she was of 300 tons burden, and had mounted four small guns. The case of the *Swallow* is different from anything which has yet been presented to the President, which shall be submitted to him on his return, and no doubt will meet his earliest attention and decision.

TO THE U. S. COMMISSIONERS TO SPAIN J. MSS.
(CARMICHAEL AND SHORT)

PHILADELPHIA, June 30, 1793.

GENTLEMEN,—I have received from Messrs. Viar and Jaudenes, the representatives of Spain at this place, a letter, which, whether considered in itself, or as the sequel of several others, conveys to us very disagreeable prospects of the temper and views of their court towards us. If this letter is a faithful expression of that temper, we presume it to be the effect of egregious misrepresentations by their agents in America. Revising our own dispositions and proceedings towards that power, we can find in them nothing but those of peace and friendship for them; and conscious that this will be apparent from a true statement of facts, I shall proceed to give you such a one, to be communicated to the court of Madrid. If they find it very different from that conveyed to them by others, they may think it prudent to doubt,

and to take and to give time for mutual inquiry and explanation. I shall proceed to give you this statement, beginning it from an early period.

At the commencement of the late war, the United States laid it down as a rule of their conduct, to engage the Indian tribes within their neighborhood to remain strictly neutral. They accordingly strongly pressed it on them, urging that it was a family quarrel with which they had nothing to do, and in which we wished them to take no part; and we strengthened these recommendations by doing them every act of friendship and good neighborhood, which circumstances left in our power. With some, these solicitations prevailed; but the greater part of them suffered themselves to be drawn into the war against us. They waged it in their usual cruel manner, murdering and scalping men, women, and children, indiscriminately, burning their houses, and desolating the country. They put us to vast expense, as well by the constant force we were obliged to keep up in that quarter, as by the expeditions of considerable magnitude which we were under the necessity of sending into their country from time to time.

Peace being at length concluded with England, we had it also to conclude with them. They had made war on us without the least provocation or pretence of injury. They had added greatly to the cost of that war. They had insulted our feelings by their savage cruelties. They were by our arms completely subdued and humbled. Under all these circumstances, we had a right to demand substantial

satisfaction and indemnification. We used that right, however, with real moderation. Their limits with us under the former government were generally ill defined, questionable, and the frequent cause of war. Sincerely desirous of living in their peace, of cultivating it by every act of justice and friendship, and of rendering them better neighbors by introducing among them some of the most useful arts, it was necessary to begin by a precise definition of boundary. Accordingly, at the treaties held with them, our mutual boundaries were settled; and notwithstanding our just right to concessions adequate to the circumstances of the case, we required such only as were inconsiderable; and for even these, in order that we might place them in a state of perfect conciliation, we paid them a valuable consideration, and granted them annuities in money which have been regularly paid, and were equal to the prices for which they have usually sold their lands.

Sensible, as they were, of the wrong they had done, they expected to make some indemnification, and were, for the most part, satisfied with the mode and measure of it. In one or two instances, where a dissatisfaction was observed to remain as to the boundaries agreed on, or doubts entertained of the authority of those with whom they were agreed, the United States invited the parties to new treaties, and rectified what appeared to be susceptible of it. This was particularly the case with the Creeks. They complained of an inconvenient cession of lands on their part, and by persons not duly representing their nation. They were therefore desired to ap-

point a proper deputation to revise their treaty; and that there might be no danger of any unfair practices, they were invited to come to the seat of the General Government, and to treat with that directly. They accordingly came. A considerable portion of what had been ceded, was, on the revision, yielded back to them, and nothing required in lieu of it; and though they would have been better satisfied to have had the whole restored, yet they had obtained enough to satisfy them well. Their nation, too, would have been satisfied, for they were conscious of their aggression, and of the moderation of the indemnity with which we had been contented. But at that time came among them an adventurer of the name of Bowles, who, acting from an impulse with which we are unacquainted, flattered them with the hope of some foreign interference, which should undo what had been done, and force us to consider the naked grant of their peace as a sufficient satisfaction for their having made war on us. Of this adventurer the Spanish government rid us; but not of his principles, his practices, and his excitements against us. These were more than continued by the officers commanding at New Orleans and Pensacola, and by agents employed by them, and bearing their commission. Their proceedings have been the subject of former letters to you, and proofs of these proceedings have been sent to you. Those, with others now sent, establish the facts, that they called assemblies of the southern Indians, openly persuaded them to disavow their treaties, and the limits therein established, promised to support them with all the

powers which depended on them, assured them of the protection of their sovereign, gave them arms in great quantities for the avowed purpose of committing hostilities on us, and promised them future supplies to their utmost need. The Chickasaws, the most steady and faithful friends of these States, have remained unshaken by these practices. So also have the Chocktaws, for the most part. The Cherokees have been teased into some expressions of discontent, delivered only to the Spanish Governors, or their agents; while to us they have continued to speak the language of peace and friendship. One part of the nation only, settled at Chuckamogga and mixed with banditti and outcasts from the Shawanese and other tribes, acknowledging control from none, and never in a state of peace, have readily engaged in the hostilities against us to which they were encouraged. But what was much more important, great numbers of the Creeks, chiefly their young men, have yielded to these incitements, and have now, for more than a twelvemonth, been committing murders and desolations on our frontiers. Really desirous of living in peace with them, we have redoubled our efforts to produce the same disposition in them. We have borne with their aggressions. forbidden all returns of hostility against them, tied up the hands of our people, insomuch that few instances of retaliation have occurred even from our suffering citizens; we have multiplied our gratifications to them, fed them when starving, from the produce of our own fields and labor. No longer ago than the last winter, when they had no other re-

sources against famine, and must have perished in great numbers, we carried into their country and distributed among them, gratuitously, ten thousand bushels of corn; and that too, at the same time, when their young men were daily committing murders on helpless women and children on our frontiers. And though these depredations now involve more considerable parts of the nation, we are still demanding punishment of the guilty individuals, and shall be contented with it. These acts of neighborly kindness and support on our part have not been confined to the Creeks, though extended to them in much the greatest degree. Like wants among the Chickasaws had induced us to send to them also, at first, five hundred bushels of corn, and afterwards, fifteen hundred more. Our language to all the tribes of Indians has constantly been, to live in peace with one another, and in a most especial manner, we have used our endeavors with those in the neighborhood of the Spanish colonies, to be peaceable towards those colonies. I sent you on a former occasion the copy of a letter from the Secretary of War to Mr. Seagrove, one of our agents with the Indians in that quarter, merely to convey to you the general tenor of the conduct marked out for those agents; and I desired you, in placing before the eyes of the Spanish ministry the very contrary conduct observed by their agents here, to invite them to a reciprocity of good offices with our Indian neighbors, each for the other, and to make our common peace the common object of both nations. I can protest that such have hitherto been the candid and zealous endeavors of

this government, and that if its agents have in any instance acted in another way, it has been equally unknown and unauthorized by us, and that were even probable proofs of it produced, there would be no hesitation to mark them with the disapprobation of the government. We expected the same friendly condescension from the court of Spain, in furnishing you with proofs of the practices of the Governor de Carondelet in particular practices avowed by him, and attempted to be justified in his letter.

In this state of things, in such dispositions towards Spain and towards the Indians, in such a course of proceedings with respect to them, and while negotiations were instituted at Madrid for arranging these and all other matters which might affect our friendship and good understanding, we received from Messrs. de Viar and Jaudenes their letter of May the 25th, which was the subject of mine of May the 31st to you; and now again we have received that of the 18th instant, a copy of which is enclosed. This letter charges us, and in the most disrespectful style, with

1. Exciting the Chickasaws to war on the Creeks.

2. Furnishing them with provisions and arms.

3. Aiming at the occupation of a post at the Ecores amargas.

4. Giving medals and marks of distinction to several Indians.

5. Meddling with the affairs of such as are allies of Spain.

6. Not using efficacious means to prevent these proceedings.

I shall make short observations on these charges.

1. Were the first true, it would not be unjustifiable. The Creeks have now a second time commenced against us a wanton and unprovoked war, and the present one in the face of a recent treaty, and of the most friendly and charitable offices on our part. There would be nothing out of the common course of proceeding then, for us to engage allies, if we needed any, for their punishment. But we neither need, nor have sought them. The fact itself is utterly false, and we defy the world to produce a single proof of it. The declaration of war by the Chickasaws, as we are informed, was a very sudden thing, produced by the murder of some of their people by a party of Creeks, and produced so instantaneously as to give nobody time to interfere, either to promote or prevent a rupture. We had, on the contrary, most particularly exhorted that nation to preserve peace, because in truth we have a most particular friendship for them. This will be evident from a copy of the message of the President to them, among the papers now enclosed.

2. The gift of provisions was but an act of that friendship to them, when in the same distress, which had induced us to give five times as much to the less friendly nation of the Creeks. But we have given arms to them. We believe it is the practice of every white nation to give arms to the neighboring Indians. The agents of Spain have done it abundantly, and, we suppose, not out of their own pockets, and this for purposes of avowed hostility on us; and they have been liberal in promises of further supplies.

We have given a few arms to a very friendly tribe, not to make war on Spain, but to defend themselves from the atrocities of a vastly more numerous and powerful people, and one which, by a series of unprovoked and even unrepelled attacks on us, is obliging us to look toward war as the only means left of curbing their insolence.

3. We are aiming, as is pretended, at an establishment on the Mississippi, at the Ecores amargas. Considering the measures of this nature with which Spain is going on, having, since her proposition to treat with us on the subject, established posts at the Walnut hills and other places for two hundred miles upwards, it would not have been wonderful if we had taken countervailing measures. But the truth is, we have not done it. We wished to give a fair chance to the negotiations going on, and thought it but common candor to leave things in *statu quo*, to make no innovation pending the negotiation. In this spirit we forbid, and deterred even by military force, a large association of our citizens, under the name of the Yazoo companies, which had formed to settle themselves at those very Walnut hills, which Spain has since occupied. And so far are we from meditating the particular establishment so boldly charged in this letter, that we know not what place is meant by the Ecores amargas. This charge then is false also.

4. Giving medals and marks of distinction to the Indian chiefs. This is but blindly hinted at in this letter, but was more pointedly complained of in the former. This has been an ancient custom from time

immemorial. The medals are considered as complimentary things, as marks of friendship to those who come to see us, or who do us good offices, conciliatory of their good will towards us, and not designed to produce a contrary disposition towards others. They confer no power, and seem to have taken their origin in the European practice, of giving medals or other marks of friendship to the negotiators of treaties and other diplomatic characters, or visitors of distinction. The British government, while it prevailed here, practised the giving medals, gorgets, and bracelets to the savages, invariably. We have continued it, and we did imagine, without pretending to know, that Spain also did it.

5. We meddle with the affairs of Indians in alliance with Spain. We are perfectly at a loss to know what this means. The Indians on our frontier have treaties both with Spain and us. We have endeavored to cultivate their friendship, to merit it by presents, charities, and exhortations to peace with their neighbors, and particularly with the subjects of Spain. We have carried on some little commerce with them, merely to supply their wants. Spain too has made them presents, traded with them, kept agents among them, though their country is within the limits established as ours at the general peace. However, Spain has chosen to have it understood that she has some claim to some parts of that country, and that it must be one of the subjects of our present negotiations. Out of respect for her then, we have considered her pretensions to the country, though it was impossible to believe them serious, as

coloring pretensions to a concern with those Indians on the same ground with our own, and we were willing to let them go on till a treaty should set things to right between us.

6. Another article of complaint is, that we have not used efficacious means to suppress these practices. But if the charge is false, or the practice justifiable, no suppression is necessary.

And lastly, these gentlemen say that on a view of these proceedings of the United States with respect to Spain and the Indians, their allies, they foresee that our peace with Spain is very problematical in future. The principal object of the letter being *our* supposed excitements of the Chickasaws against the Creeks, and *their* protection of the latter, are we to understand from this, that if we arm to repulse the attacks of the Creeks on ourselves, it will disturb our peace with Spain? That if we will not fold our arms and let them butcher us without resistance, Spain will consider it as a cause of war? This is, indeed, so serious an intimation, that the President has thought it could no longer be treated with subordinate characters, but that his sentiments should be conveyed to the government of Spain itself, through you.

We love and we value peace; we know its blessings from experience. We abhor the follies of war, and are not untried in its distresses and calamities. Unmeddling with the affairs of other nations, we had hoped that our distance and our dispositions would have left us free, in the example and indulgence of peace with all the world. We had, with sincere

and particular dispositions, courted and cultivated the friendship of Spain. We have made to it great sacrifices of time and interest, and were disposed to believe she would see her interests also in a perfect coalition and good understanding with us. Cherishing still the same sentiments, we have chosen, in the present instance, to ascribe the intimations in this letter to the particular character of the writers, displayed in the peculiarity of the style of their communications, and therefore, we have removed the cause from them to their sovereign, in whose justice and love of peace we have confidence. If we are disappointed in this appeal, if we are to be forced into a contrary order of things, our mind is made up. We shall meet it with firmness. The necessity of our position will supersede all appeal to calculation now, as it has done heretofore. We confide in our own strength, without boasting of it; we respect that of others, without fearing it. If we cannot otherwise prevail on the Creeks to discontinue their depredations, we will attack them in force. If Spain chooses to consider our defence against savage butchery as a cause of war to her, we must meet her also in war, with regret, but without fear; and we shall be happier, to the last moment, to repair with her to the tribunal of peace and reason.

The President charges you to communicate the contents of this letter to the court of Madrid, with all the temperance and delicacy which the dignity and character of that court render proper; but with all the firmness and self-respect which befit a nation conscious of its rectitude, and settled in its purpose.

TO JAMES MADISON MAD. MSS.

July 7, 1793.

DEAR SIR,—I wrote you on the 30th ult. and shall be uneasy till I have heard you have received it. I have no letter from you this week. You will perceive by the inclosed papers that they are to be discontinued in their present form & a daily paper published in their stead, *if subscribers enough can be obtained.* I fear they cannot, for nobody here scarcely has ever taken his papers. You will see in these Colº H's 2d & 3d pacificus. Nobody answers him, & his doctrines will therefore be taken for confessed. For God's sake, my dear Sir, take up your pen, select the most striking heresies and cut him to pieces in the face of the public. There is nobody else who can & will enter the lists with him.—Never in my opinion, was so calamitous an appointment made, as that of the present Minister of F. here. Hot headed, all imagination, no judgment, passionate, disrespectful & even indecent towards the P. in his written as well as verbal communications, talking of appeals from him to Congress, from them to the people, urging the most unreasonable & groundless propositions, & in the most dictatorial style &c &c &c If ever it should be necessary to lay his communications before Congress or the public, they will excite universal indignation. He renders my position immensely difficult. He does me justice personally, and, giving him time to vent himself & then cool, I am on a footing to advise him freely, & he respects it, but he breaks out again on the very first occasion, so as to show that he is incapable of correcting him-

self. To complete our misfortune we have no channel of our own through which we can correct the irritating representations he may make. Adieu.

CABINET OPINION ON "LITTLE SARAH" J. MSS.

July 8, 1793.

At a meeting at the State house of the City of Philadelphia,

Present: the Secretary of state, the Secretary of the Treasury the Secretary at War.

It appears that a brigantine, called the *Little Sarah*, has been fitted out at the port of Philadelphia, with fourteen cannon & all other equipments indicating that she is intended as a Privateer to cruise under the authority of France, & that she is now lying in the river Delaware, at some place between this city & Mud island; that a conversation has been had between the Secretary of State & the Minister Plenipotentiary of France, in which conversation the Minister refused to give any explicit assurance that the brigantine would continue until the arrival of the President & his decision in the case, but made declarations respecting her not being ready to sail within the time of the expected return of the President, from which the Secretary of state infers with confidence, that she will not sail till the President will have an opportunity of considering & determining the case; that in the course of the conversation, the Minister declared that the additional guns which had been taken in by the *Little Sarah* were French property, but the Governor of Pennsylvania declared

that he has good ground to believe that two of her cannon were purchased here of citizens of Philadelphia.

The Governor of Pennsylvania asks advice what steps, under the circumstances, he shall pursue?

The Secretary of the Treasury & the Secretary of war are of opinion, that it is expedient that immediate measures should be taken provisionally for establishing a battery on Mud island, under cover of a party of militia, with direction that if the brig *Sarah* should attempt to depart before the pleasure of the President shall be known concerning her, military coercion be employed to arrest and prevent her progress.

The Secretary of state dissents from this opinion.

Information having also been received that part of the crew of the *Sarah* are citizens of the United States, as can be testified by Charles Biddle of this city.

The above mentioned heads of departments agree that this information shall be communicated to the attorney of the district, in order that, pursuant to his former instructions, he may take measures for apprehending and bringing them to trial.

REASONS FOR HIS DISSENT [1]

[July 9, 1793.]

I am against the preceding opinion of the Secretaries of the Treasury & War, for ordering a battery

[1] See Hamilton's *Works of Hamilton* (iv, 443) for the opinion of Hamilton and Knox. This "Reasons for his Dissent" was sent by Jefferson to Washington the moment the latter reached Philadelphia (July 11th), with an undated letter as follows:

"Th. Jefferson presents his respects to the President. He had ex-

to be erected on Mud island, & firing on the *Little Sarah*, an armed vessel of the republic of France.

Because I am satisfied from what passed between Mr. Genet & myself, at our personal interview yesterday, that the vessel will not be ordered to sail till the return of the President, which, by a letter of this day's post, we may certainly expect within eight & forty hours from this time.

Because the erecting a battery & mounting guns to prevent her passage, might cause a departure not now intended, and produce the fact it is meant to prevent.

Because were such battery & guns now in readiness & to fire on her, in the present ardent state of her crew just in the moment of leaving port, it is morally certain that bloody consequences would follow. No one can say how many lives would be lost on both

pected that the Secretaries of the Treasury & War would have given to the President immediately the statement of facts in the case of the *Little Sarah*, as drawn by the former & agreed to, as also their Reasons: but Colo. Hamilton informed Th. J. that he had not been able to prepare copies. Th. J. sends the President the copies they had given him, which being prefixed to his opinion will make the case complete, as it is proper the President should see both sides of it at once.

"Th. J. has had a fever the two last nights which has held him till the morning. Something of the same is now coming on him, but nothing but absolute inability will *prevent* his being in town early tomorrow morning.

"Th. J. had written the above before he had the honor of the President's note on the subject of this vessel. He has received assurance from Mr. Genet to-day that she will not be gone before the President's decision. Th. J. is himself of opinion that whatever is aboard of her of arms, ammunition or men contrary to the rules heretofore laid down by the President, ought to be withdrawn. On this subject he will have the honor of conferring with the President or any others whenever he pleases."

See also vol. i., 237, for another paper relating to the *Little Sarah*.

sides, & all experience has shewn that blood once seriously spilled, between nation & nation, the contest is continued by subordinate agents, and the door of peace is shut. At this moment too we expect in the river twenty of their ships of war, with a fleet of from 100 to 150. of their private vessels, which will arrive at the scene of blood in time to continue it, if not to partake in it.

Because the actual commencement of hostilities against a nation, for such this act may be is an act of too serious consequence to our countrymen to be brought on their heads by subordinate officers, not chosen by them nor clothed with their consequence; and too presumptuous on the part of those officers, when the chief magistrate, into whose hands the citizens have committed their safety, is within eight & forty hours of his arrival here, & may have an opportunity of judging for himself & them whether the buying & carrying away two cannon (for according to information, the rest are the nation's own property,) is sufficient cause of war between Americans & Frenchmen.

Because should the vessel, contrary to expectation, depart before the President's arrival, the adverse powers may be told the truth of the case. That she went off contrary to what we had a right to expect, that we shall be justifiable in future cases to measure our confidence accordingly, that for the present we shall demand satisfaction from France, which, with the proofs of good faith we have already given, ought to satisfy them. Above all, Great Britain ought not to complain: for, since the date of the order

forbidding that any of the belligerent powers should equip themselves in our ports with our arms, these two cannon are all that have escaped the vigilance of our officers, on the part of their enemies, while their vessels have carried off more than ten times the number, without any impediment: and if the suggestion be true (& as yet it is but suggestion) that there are 15. or 20. Americans on board the *Little Sarah*, who have gone with their own consent, it is equally true that more than ten times that number of Americans are at this moment on board English ships of war, who have been taken forcibly from our merchant vessels, at sea or in port wherever met with, & compelled to bear arms against the friends of their country. And is it less a breach of our neutrality towards France to suffer England to strengthen herself with our force, than towards England to suffer France to do it? And are we equally ready & disposed to sink the British vessels in our ports by way of reprisal for this notorious and avowed practice?

Because it is inconsistent for a nation which has been patiently bearing for ten years the grossest insults & injuries from their late enemies, to rise at a feather against their friends & benefactors: & that too in a moment when circumstances have kindled the most ardent affections of the two people toward each other, when the little subjects of displeasure which have arisen are the acts of a particular individual, not yet important enough to have been carried to his government as causes of complaint, are such as nations of moderation & justice settle by

negociation, not making war their first step, are such as that government would correct at a word, if we may judge from the late unequivocal demonstrations of their friendship towards us, and are very slight shades of the acts committed against us by England which we have been endeavoring to rectify by negociation, and on which they have never condescended to give any answer to our Minister.

Because I would not gratify the combination of kings with the spectacle of the two only republics on earth destroying each other for two cannon; nor would I, for infinitely greater cause, add this country to that combination, turn the scale of contest, & let it be from our hands that the hopes of man receive their last stab.

It has been observed that a general order has been already given to stop by force vessels arming contrary to rule in our ports, in which I concurred. I did so, because it was highly presumeable that the destination of such a vessel would be discovered in some early stage, when there would be few persons on board, these not yet disposed nor prepared to resist, & a small party of militia put aboard would stop the procedure without a marked infraction of the peace. But it is a much more serious thing when a vessel has her full complement of men, (here said to be 120) with every preparation & probably with disposition to go through with their enterprise. A serious engagement is then a certain consequence. Besides, an act of force, committed by an officer in a distant port, under general orders, given long ago, to take effect on all cases, & with less latitude of dis-

cretion in him, would be a much more negociable case, than a recent order, given by the general government itself (for that is the character we are to assume) on the spot, in the very moment, pointed at this special case, professing full discretion, & not using it. This would be a stubborn transaction, not admitting those justifications & explanations which might avert a war, or admitting such only as would be entirely humiliating to the officers giving the order & to the government itself.

On the whole, respect to the chief magistrate, respect to our countrymen, their lives, interests, & affections, respect to a most friendly nation, who, if we give them the opportunity, will answer our wrongs by correcting & not by repeating them; respect to the most sacred cause that ever man was engaged in, poising maturely the evils which may flow from the commitment of an act which it would be in the power & probably in the temper of subordinate agents to make an act of continued war, and those which may flow from an eight & forty hours suspension of the act, are motives with me for suspending it eight & forty hours, even should we thereby lose the opportunity of committing it altogether.

TO THE SPANISH COMMISSIONERS
(VIAR AND JAUDENES)

PHILADELPHIA July 11, 1793.

GENTLEMEN,—Your letter of the 8th of June has been duly received and laid before the President of

of the United States. The matter it contains, is of so serious a complexion, that he chooses to treat of it with your Government directly. To them, therefore, his sentiments thereon will be communicated, through the channel of our commissioners at Madrid, with a firm reliance on the justice and friendship of his Catholic Majesty. In doing this, it will be impossible not to manifest the impression which the style, as well as matter of your communications, make on the Government of the United States.

CABINET OPINION ON PRIVATEERS AND PRIZES

J. MSS.

July 12, 1793.

At a meeting of the heads of the departments at the President's on Summons from him, & on consideration of various representations from the Min. Pleny. of France & Gr. Britain on the subject of vessels arming & arriving in our ports, & of prizes; it is their opinion that letters be written to the said Ministers informing them that the Executive of the U S. desirous of having done what shall be strictly conformable to the treaties of the U S., & the laws, respecting the sd cases has determined to refer the questions arising therein to persons learned in the laws; that as this reference will occasion some delay, it is expected that in the meantime the *Little Sarah*, or *Little Democrat*, the ship *Jane*, & the ship *William* in the Delaware, the *Citoyen Genet* & her prizes the brigs *Lovely lass* & *Prince William Henry*, & the brig *Fanny* in the Chesapeake do not depart till the further order of the President.

That letters be addressed to the judges of the Supreme court of the U. S. requesting their attendance at this place on Thursday the 18th inst. to give their advice on certain matters of public concern which will be referred to them by the President.

That the Governor be desired to have the ship *Jane* attended to with vigilance, & if she be found augmenting her force & about to depart, that he cause her to be stopped.

TO THE FRENCH MINISTER J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA, July 12, 1793.

SIR,—The President of the United States, desirous of having done what shall be strictly conformable to the treaties of the United States and laws, respecting the several representations received from yourself, and the minister plenipotentiary of Great Britain, on the subject of vessels arming, or arriving within our ports, and of prizes, has determined to refer the questions arising thereon to persons learned in the laws. As this reference will necessitate some delay, he will expect from both parties, that, in the mean time, the *Little Sarah*, or *Little Democrat*, the ships *Jane* and *William*, in the Delaware, the *Citoyen Genet*, and her two prizes, the *Lovely Lass* and *Prince William Henry*, and the brig *Fanny*, in the Chesapeake, do not depart, until his ultimate determination shall be made known. You may be assured, sir, that the delay will be as short as possible, and the object of it being to obtain the

best advice possible, on the sense of the laws and treaties, respecting the several cases, I am persuaded you will think the delay well compensated.

TO JAMES MONROE J. MSS.

PHILADELPHIA, July 14, 1793.

DEAR SIR,—Your favor of June 27. has been duly received. You have most perfectly seized the *original* idea of the proclamation. When first proposed as a declaration of neutrality, it was opposed, 1. Because the Executive had no power to declare neutrality. 2. As such a declaration would be premature, & would lose us the benefit for which it might be bartered, it was urged that there was a strong impression in the minds of many that they were free to join in the hostilities on the side of France. Others were unapprised of the danger they would be exposed to in carrying contraband goods, &c. It was therefore agreed that a proclmn should issue, declaring that we were in a state of peace with all the parties, admonishing the people to do nothing contravening it, & putting them on their guard as to contraband.—On this ground it was accepted or acquiesced in by all, and E. R., who drew it, brought to me the draught, to let me see there was no such word as *neutrality* in it. Circumstances forbid other verbal criticisms. The public, however, soon took it up as a declaration of neutrality, & it came to be considered at length as such.—The arming privateers in Charleston, with our means entirely, & partly our citizens, was complained of in a memorial from Mr. Hammond. In

our consultation, it was agreed we were by treaty *bound* to prohibit the enemies of France from arming in our ports, & were *free* to prohibit France also, and that by the laws of neutrality we are bound to permit or forbid the same things to both, as far as our treaties would permit. All, therefore, were forbidden to arm within our ports, & the vessels armed before the prohibition were on the advice of a majority ordered to leave our ports. With respect to our citizens who had joined in hostilities against a nation with whom we were at peace, the subject was thus viewed. Treaties are laws. By the treaty with England we are in a state of peace with her. He who breaks that peace, if within our jurisdiction, breaks the laws, & is punishable by them. And if he is punishable he ought to be punished, because no citizen should be free to commit his country to war. Some vessels were taken within our bays. There, foreigners as well as natives are liable to punishment. Some were committed in the high seas. There, as the sea is a common jurisdiction to all nations, & divided *by persons*, each having a right to the jurisdiction over their own citizens only, our citizens only were punishable by us. But they were so, because within our jurisdiction. Had they gone into a *foreign land* & committed a hostility, they would have been clearly out of our jurisdiction & unpunishable by the existing laws. As the armament in Charleston had taken place before our citizens might have reflected on the case, only two were prosecuted, merely to satisfy the complaint made, & to serve as a warning to others. But others having attempted to arm

another vessel in New York after this was known, all the persons concerned in the latter case, foreign as well as native, were directed to be prosecuted. The Atty Genl gave an official opinion that the act was against law, & coincided with all our private opinions; & the lawyers of this State, New York & Maryland, who were applied to, were unanimously of the same opinion. Lately mr. Rawle, Atty of the U. S. in this district, on a conference with the District judge, Peters, supposes the law more doubtful. New acts, therefore, of the same kind, are left unprosecuted till the question is determined by the proper court, which will be during the present week. If they declare the act no offence against the laws, the Executive will have acquitted itself towards the nation attacked by their citizens, by having submitted them to the sentence of the laws of their country, & towards those laws by an appeal to them in a case which interested the country, & which was at least doubtful. I confess I think myself that the case is punishable, & that, if found otherwise, Congress ought to make it so, or we shall be made parties in every maritime war in which the piratical spirit of the banditti in our ports can engage. I will write you what the judicial determination is.—Our prospects with Spain appear to me, from circumstances taking place on this side of the Atlantic absolutely desperate. Measures are taken to know if they are equally so on the other side, and before the close of the year that question will be closed, and your next meeting must probably prepare for the new order of things.—I fear the disgust of France is inevitable.

We shall be to blame in part. But the new minister much more so. His conduct is indefensible by the most furious Jacobin. I only wish our countrymen may distinguish between him & his nation, & if the case should ever be laid before them, may not suffer their affection to the nation to be diminished. H., sensible of the advantage they have got, is urging a full appeal by the Government to the people. Such an explosion would manifestly endanger a dissolution of the friendship between the two nations; & ought therefore to be deprecated by every friend to our liberty; & none but an enemy to it would wish to avail himself of the indiscretions of an individual to compromit two nations esteeming each other ardently. It will prove that the agents of the two people are either great bunglers or great rascals, when they cannot preserve that peace which is the universal wish of both.—The situation of the St. Domingo fugitives (aristocrats as they are) calls aloud for pity & charity. Never was so deep a tragedy presented to the feelings of man. I deny the power of the general government to apply money to such a purpose, but I deny it with a bleeding heart. It belongs to the State governments. Pray urge ours to be liberal. The Executive should hazard themselves more on such an occasion, & the Legislative when it meets ought to approve & extend it. It will have a great effect in doing away the impression of other disobligations towards France.—I become daily more & more convinced that all the West India Islands will remain in the hands of the people of colour, & a total expulsion of the whites sooner or

later take place. It is high time we should foresee the bloody scenes which our children certainly, and possibly ourselves (south of Potommac,) have to wade through, & try to avert them.—We have no news from the continent of Europe later than the 1st of May.—My love to mrs. Monroe. Tell her they are paving the street before your new house. Adieu. Yours affectionately.

TO THE SPANISH COMMISSIONERS J. MSS.

(VIAR AND JAUDENES)

PHILADELPHIA, July 14, 1793.

GENTLEMEN,—I have laid before the President your letters of the 11th and 13th instant. Your residence in the United States has given you an opportunity of becoming acquainted with the extreme freedom of the press in these States. Considering its great importance to the public liberty, and the difficulty of subjecting it to very precise rules, the laws have thought it less mischievous to give greater scope to its freedom, than to the restraint of it. The President has therefore no authority to prevent publications of the nature of those you complain of in your favor of the 11th. I can only assure you that the government of the United States has no part in them, and that all its expressions of respect towards his Catholic Majesty, public and private, have been as uniform as their desire to cultivate his friendship has been sincere.

With respect to the letters I have had the honor of receiving from you for some time past, it must be

candidly acknowledged that their complaints were thought remarkable, as to the matters they brought forward as well as the manner of expressing them. A succession of complaints, some founded on small things taken up as great ones, some on suggestions contrary to our knowledge of things, yet treated as if true on very inconclusive evidence, and presented to view as rendering our peace very problematical, indicated a determination to find cause for breaking the peace. The President thought it was high time to come to an eclaircisement with your government directly, and has taken the measure of sending a courier to Madrid for this purpose. This of course transfers all explanation of the past to another place. But the President is well pleased to hope from your letters of the 11th and 13th, that all perhaps had not been meant which had been understood from your former correspondence, and will be still more pleased to find these and all other difficulties between the two countries settled in such a way as to insure their future friendship.

I beg you to accept assurances of my particular esteem, and of the real respect with which I have the honor to be, Gentlemen, your most obedient, and most humble servant.

TO THE CHIEF JUSTICE AND JUDGES OF THE SUPREME COURT OF THE UNITED STATES J. MSS.

PHILADELPHIA, July 18, 1793.

GENTLEMEN,—The war which has taken place among the powers of Europe produces frequent

transactions within our ports and limits, on which questions arise of considerable difficulty, & of greater importance to the peace of the U. S. These questions depend for their solution on the construction of our treaties, on the laws of nature & nations, & on the laws of the land; and are often presented under circumstances which do not give a cognizance of them to the tribunals of the country. Yet their decision is so little analogous to the ordinary functions of the Executive, as to occasion much embarrassment & difficulty to them. The President would therefore be much relieved if he found himself free to refer questions of this description to the opinions of the Judges of the Supreme court of the U. S. whose knolege of the subject would secure us against errors dangerous to the peace of the U. S. and their authority ensure the respect of all parties. He has therefore asked the attendance of such of the judges as could be collected in time for the occasion, to know, in the first place, their opinion, Whether the public may, with propriety, be availed of their advice on these questions? and if they may, to present, for their advice, the abstract questions which have already occurred, or may soon occur, from which they will themselves strike out such as any circumstances might, in their opinion, forbid them to pronounce on. I have the honor, &c.[1]

[1] The "Questions" to which this letter alludes, were considered at a Cabinet meeting between July 12th and 18th, and a memorandum of what was agreed upon was given to Jefferson to transcribe, which he did, and sent the completed paper to the President on the latter date, in the following letter:

"Th. Jefferson has the honor to inclose to the President a copy of

TO JAMES MADISON MAD. MSS.

July 21, 1793.

I wrote you on the 14th, since which I have no letter from you. It appears that two considerable engagements took place between France & the combined armies on the 1st & 8th of May. In the former, the French have had rather the worst of it, as may be concluded by their loss of cannon & loss

the questions to be proposed to the judges, which he has endeavored to make with exactness, but cannot be sure he may not have mistaken some of the interlineations of the original. He has added at the end those from his own paper which were agreed to. They are the numbers 22. &c. to the end.

"He incloses also the rough draughts of Colº Hamilton & Genl Knox; the former may serve to correct any errors of copying which he may have committed."

The "Questions," the first twenty-one of which were printed in Hamilton's *Works of Hamilton* (IV, 450), as drafted by Hamilton, were as follows:

Questions for Judges

1. Do the treaties between the US. & France give to France or her citizens a *right*, when at war with a power with whom the US. are at peace, to fit out originally in & from the ports of the US, vessels armed for war, with or without commission?

2. If they give such a *right*, does it extend to all manner of armed vessels, or to particular kinds only? if the latter, to what kinds does it extend?

3. Do they give to France, or her citizens, in the case supposed, a right to refit, or arm anew vessels, which before their coming within any port of the US. were armed for war, with or without commission?

4. If they give such a right, does it extend to all manner of armed vessels, or to particular kinds only? if the latter, to what kinds does it extend? does it include an *augmentation* of force, or does it only extend to replacing the vessel in statu quo?

5. Does the 22d. Article of the Treaty of Commerce, in the case supposed, extend to vessels armed for war on account of the *government* of a power at war with France, or to merchant armed vessels belonging to the subjects or citizens of that power (viz) of the description of those which, by the English, are called Letters of Marque ships, by the French 'batiments armés en merchandize et en guerre'?

6. Do the treaties aforesaid prohibit the US. from permitting in the

of ground. In the latter, they have had rather the best; as is proved by their remaining on the ground & their throwing relief into Condé, which had been the object of both battles. The French attacked in both. They have sent commissioners to England to sound for peace. Genl. Felix Wimpfen is one.

case supposed, the armed vessels belonging to a power at war with France, or to the citizens or subjects of such power to come within the ports of the US. there to remain as long as they may think fit, except in the case of their coming on with prizes made of the subjects or property of France?

7. Do they prohibit the US. from permitting in the case supposed vessels armed on account of the government of a power at war with France, or vessels armed for merchandize & war, with or without commission on account of the subjects or citizens of such power, or any vessels other than those commonly called privateers, to sell freely whatsoever they may bring into the ports of the US. & freely to purchase in & carry from the ports of the US. goods, merchandize & commodities, except as excepted in the last question?

8. Do they oblige the US. to permit France, in the case supposed, to sell in their ports the prizes which she or her citizens may have made of any power at war with her, the citizens or subjects of such power; or exempt from the payment of the usual duties, on ships & merchandize, the prizes so made, in the case of their being to be sold within the ports of the US?

9. Do these treaties, particularly the Consular convention, authorize France, as of right, to erect courts within the jurisdiction of the US. for the trial & condemnation of prizes made by armed vessels in her service?

10. Do the laws & usages of nations authorize her, as of right, to erect such courts for such purpose?

11. Do the laws of neutrality, considered relatively to the treaties of the US. with foreign powers, or independently of those treaties permit the US. in the case supposed, to allow to France, or her citizens the privilege of fitting out *originally*, in & from the ports of the US. vessels armed & commissioned for war, either on account of the government, or of private persons, or both?

12. Do those laws permit the US. to extend the like privilege to a power at war with France?

13. Do the laws of neutrality, considered as aforesaid, permit the US. in the case supposed, to allow to France or her citizens, the privilege of refitting or arming anew, vessels which before their coming

There is a strong belief that the bankruptcies & demolition of manufactures through the three kingdoms, will induce the English to accede to peace.— E. R. is returned. The affair of the loan has been kept suspended, & is now submitted to him. He brings very flattering information of the loyalty of the people of Virginia to the general government, &

within the US. were armed & commissioned for war? May such privilege include an *augmentation* of the force of such vessels?

14. Do those laws permit the US. to extend the like privilege to a power at war with France?

15. Do those laws, in the case supposed, permit merchant vessels of either of the powers at war, to arm in the ports of the US. without being commissioned? May this privilege be rightfully refused?

16. Does it make any difference in point of principle, whether a vessel be armed for war, or the force of an armed vessel be augmented, in the ports of the US. in the *means* procured in the US. or with means brought into them by the party who shall so arm or augment the force of such vessel? if the first be unlawful, is the last lawful?

17. Do the laws of neutrality, considered as aforesaid, authorize the US. to permit to France, her subjects or citizens, the sale within their ports of prizes made of the subjects or property of a power at war with France, before they have been carried into some port of France & there comdemned, refusing the like privilege to her enemy?

18. Do those laws authorize the US. to permit to France the erection of courts within their territory & jurisdiction, for the trial & condemnation of prizes, refusing that privilege to a power at war with France?

19. If any armed vessel of a foreign power at war with another, with whom the US. are at peace, shall make prize of the subjects or property of it's enemy within the territory or jurisdiction of the US. have not the US, a right to cause restitution of such prize? are they bound or not by the principles of neutrality so to do, if such prize shall be within their power?

20. To what distance, by the laws & usages of nations, may the US. exercise the right of prohibiting the hostilities of foreign powers at war with each other, within rivers, bays, & arms of the sea, & upon the sea along the coasts of the US.?

21. Have vessels armed for war under commission from a foreign power, a right, without the consent of the US. to engage, within their jurisdiction, seamen or souldiers, for the service of such vessels, being

thinks the whole indisposition there is directed against the Secretary of the Treasury *personally*, not against his measures. On the whole he has quieted uneasiness here. I have never been able to get a sight of Billy till yesterday. He has promised to bring me the bill of your ploughs, which shall be paid. Adieu. Yours affectionately.

TO THE FRENCH MINISTER J. MSS.
(EDMOND CHARLES GENET)

PHILADELPHIA, July 24. 1793.

SIR,—Your favor of the 9th instant, covering the information of Silvat Ducamp, Pierre Nouvel, Chouquet de Savarence, Gaston de Nogeré and G. Beus-

citizens of that power, or of another foreign power, or citizens of the US?

22. What are the articles, by name, to be prohibited to both or either party?

23. To what extent does the *reparation* permitted in the 19. Article of the treaty with France go?

24. What may be done as to vessels armed in our ports before the President's proclamation? and what as to the prizes they made *before* and *after*.

25. May we, within our own ports, sell ships to both parties, prepared merely for merchandize? May they be pierced for guns?

26. May we carry either or both kinds to the ports of the belligerent powers for sale?

27. Is the principle that free bottoms make free goods, & enemy bottoms make enemy goods, to be considered as now an established part of the law of nations?

28. If it is not, are nations with whom we have no treaties, authorized by the law of nations to take out of our vessels enemy passengers, not being souldiers, & their baggage?

29. May an armed vessel belonging to any of the belligerent powers follow *immediately* merchant-vessels, enemies, departing from our ports, for the purpose of making prizes of them?—if not, how long ought the former to remain after the latter has sailed? and what shall be considered as the place of departure, from which the time is to be counted? and how are the facts to be ascertained?

tier, that being on their passage from the French West Indies to the United States, on board merchant vessels of the United States with slaves and merchandise of their property, these vessels were stopped by British armed vessels and their property taken out as lawful prize, has been received.

I believe it cannot be doubted, but that by the general law of nations, the goods of a friend found in the vessel of an enemy are free, and the goods of an enemy found in the vessel of a friend are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels in the cases above mentioned, and I confess I should be at a loss on what principle to reclaim it. It is true that sundry nations, desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port and detained, under pretence of having enemy goods aboard, have, in many instances, introduced by their special treaties another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss. But this is altogether the effect of particular treaty, controlling in special cases the general principle of the law of nations, and therefore taking effect between such nations only as have so agreed to control it. England has generally determined to adhere to the rigorous principle, having in no instance, as far as I recollect, agreed to the modification of letting the property of the goods follow that of the vessel,

except in the single one of the treaty with France. We have adopted this modification in our treaties with France, the United Netherlands and Russia: and therefore, as to them, our vessels cover the goods of their enemies, and we lose our goods when in the vessels of their enemies. Accordingly you will be pleased to recollect that in the late case of Holland and Mackie, citizens of the United States, who had laden a cargo of flour on board a British vessel which was taken by the French frigate *l'Ambuscade* and brought into this port, when I reclaimed the cargo it was only on the ground that they were ignorant of the declaration of war when it was shipped. You observed, however, that the 14th article of our treaty had provided that ignorance should not be pleaded beyond two month after the declaration of war, which term had elapsed in this case by some days, and finding that to be the truth, though their real ignorance of the declaration was equally true. I declined the reclamation, as it never was in my view to reclaim the cargo, nor apparently in yours to offer to restore it, by questioning the rule established in our treaty that enemy bottoms make enemy goods. With England, Spain, Portugal, and Austria, we have no treaties: therefore we have nothing to oppose to their acting according to the general law of nations, that enemy goods are lawful prize though found in the bottom of a friend. Nor do I see that France can suffer on the whole, for though she loses her goods in our vessels when found therein by England, Spain, Portugal, or Austria, yet she gains our goods when found in the vessels of England, Spain,

Portugal, Austria, the United Netherlands, or Prussia: and I believe I may safely affirm that we have more goods afloat in the vessels of these six nations than France has afloat in our vessels: and consequently, that France is the gainer and we the loser by the principle of our treaty. Indeed we are the losers in every direction of that principle, for when it works in our favor, it is to save the goods of our friends, when it works against us, it is to lose our own, and we shall continue to lose while the rule is only partially established. When we shall have established it with all nations we shall be in a condition neither to gain nor lose, but shall be less exposed to vexatious searches at sea. To this condition we are endeavoring to advance, but as it depends on the will of other nations as well as our own, we can only obtain it when they shall be ready to concur.

I cannot therefore but flatter myself, that on revising the cases of Ducamp and others, you will perceive that their losses result from the state of war which has permitted their enemies to take their goods tho' found in our vessels; and consequently from circumstances over which we have no control.

The rudeness to their persons practised by their enemies is certainly not favorable to the character of the latter. We feel for it as much as for the extension of it to our own citizens their companions, and find in it a motive the more for requiring measures to be taken which may prevent repetitions of it.

I have the honor to be, with great respect, Sir, your most obedient humble servant.

QUESTIONS AS TO BELLIGERENTS [1] J. MSS.

[July 29 1793]

1. Are we free, by the treaty, to prohibit France from arming vessels within our ports to cruize on her enemies?

2. If we are free to prohibit her, are we, by the laws of neutrality, bound to prohibit her?

Agreed. 3. What are the articles, by name, to be prohibited to both or either party?

4. May the prohibition extend to the use of *their own means* e. g. mounting their own guns, transferring guns from one of their own vessels to another &c?

[1] This was prepared for consideration at the Cabinet meetings on July 29th and 30th. See vol. 1, 250 and 255. The following paper represents the ultimate form:

"RULES GOVERNING BELLIGERENTS

"August 3. 1793.

I. The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties, for military service, offensive or defensive, is deemed unlawful.

II. Equipments of merchant vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

III. Equipments in the ports of the United States of vessels of war in the immediate service of the government of any of the belligerent parties, which if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize of the subjects, people or property of France coming with their prizes into the ports of the United States, pursuant to the seventeenth article of our Treaty of Amity and Commerce with France.

IV. Equipments in the ports of the United States by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize, &c.

V. Equipments of any of the vessels of France in the ports of the

5. May they receive on board their armed vessels their own sailors & citizens found within our ports?

May they receive other foreigners?

6. To what extent does the *reparation*, permitted in the article, go? **Agreed.**

7. What may be done as to vessels armed in our ports before the President's proclamation and what as to the prizes they made before & after? **Agreed.**

8. A trading vessel belonging to the enemies of France, coming here for the purposes of commerce, but armed, and having a letter of marque authorizing her to cruize &c as usual, are we obliged by the article to order such a vessel out of our ports?

9. What land locked waters, & what extent from the sea-shore, may be deemed within the limits of

United States, which are doubtful in their nature, as being applicable to commerce or war, are deemed lawful.

VI. Equipments of every kind in the ports of the United States, of privateers of the powers at war with France, are deemed unlawful.

VII. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the eighteenth article of our treaty with France, the sixteenth of our treaty with the United Netherlands, the ninth of our treaty with Prussia, and except those mentioned in the nineteenth article of our treaty with France, the seventeenth of our treaty with the United Netherlands, the eighteenth of our treaty with Prussia.

VIII. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens, not being inhabitants of the United States, except privateers of the power at war with France, and except those vessels which have made prize, &c.

The foregoing rules, having been considered by us at several meetings, and being now unanimously approved, they are submitted to the President of the United States."

our protection so as to render captures within them unlawful?

10. May we within our own ports sell ships to both parties prepared merely for merchandize? Pierced for guns?

Agreed.

11. May we carry either or both kinds to the ports of the belligerent powers for sale?

Agreed.

12. Is the principle that free bottoms make free goods, & enemy bottoms make enemy goods, to be considered as now an established part of the law of nations?

Agreed.

13. If it is not, are nations with whom we have no treaties authorized by the law of nations to take out of our vessels, enemy passengers, not being soldiers, & their baggage?

Agreed.

14. Which of the above prohibitable things are within the competence of the President to prohibit?

TO THE PRESIDENT OF THE UNITED STATES[1]

J. MSS.

PHILADELPHIA, July 31, 1793.

DEAR SIR,—When you did me the honor of appointing me to the office I now hold, I engaged in it without a view of continuing any length of time, & I pretty early concluded on the close of the first four years of our Republic as a proper period for withdrawing; which I had the honor of communicating to you. When the period, however, arrived, circumstances had arisen, which, in the opinion of some of my friends, rendered it proper to postpone my purpose for awhile. These circumstances have now

[1] See vol. 1, p. 256.

ceased in such a degree as to leave me free to think again of a day on which I may withdraw without it's exciting disadvantageous opinions or conjectures of any kind. The close of the present quarter seems to be a convenient period; because the quarterly accounts of the domestic department are then settled of course, & by that time, also, I may hope to receive from abroad the materials for bringing up the foreign account to the end of it's third year. At the close, therefore, of the ensuing month of September, I shall beg leave to retire to scenes of greater tranquillity, from those which I am every day more & more convinced that neither my talents, tone of mind, nor time of life fit me. I have thought it my duty to mention the matter thus early, that there may be time for the arrival of a successor, from any part of the Union from which you may think proper to call one. That you may find one more able to lighten the burthen of your labors, I most sincerely wish; for no man living more sincerely wishes that your administration could be rendered as pleasant to yourself, as it is useful & necessary to our country, nor feels for you a more rational or cordial attachment & respect than, Dear Sir, your most obedient, & most humble servant.

TO JAMES MADISON[1] J. MSS.

Aug. 3. 93

Yours of July 18. & 22. are received & have relieved my anxieties about mine of June 27. 30. &

[1] Parts in italic were so marked for translation into cipher. See letter of Aug. 18, *post*.

July 7. Those of July 14. 21. & 28. I hope soon to have acknoleged. We have decided unanimously to *require* the *recall of Genet. He will sink the republican* interest if they do not *abandon him. Hamilton presses eagerly an appeal i. e.* to the *people.* It's consequences you will readily seize but *I hope we shall prevent it* tho the *Pr. is inclined* to it.—The *loan* is agreed to to the full extent on *E. R.'s advice*, splitting off a *few dollars* to give himself the airs of *independence.*

I will send you the little piece written by him on *the proclamation* if I can find it. I will here note your several requisitions in your letter of July 22. 1. What concessions have been made on particular points behind the curtain. I think it is better you should not know them. 2. How far *the President* considers himself as committed with respect to some doctrines. He is certainly uneasy at those grasped at by *Pacificus* and as *the author* is universally known & I believe indeed denied not even by himself, it is foreseen that the vulnerable points, well struck, stab the party vitally. 3. Lights from the law of nations on the constructions of treaties. Vattel has been most generally the guide. Bynkershoeck often quoted, Wolf sometimes. 4. No call was made by any *power* previous to the *proclamation. Genet* has been fully heard on his most unfounded pretentions under *the treaty.* His ignorance of everything written on the subject is astonishing. I think he has never read a book of any sort in that branch of science. The question whether the war between France & Gr. Br. is offensive or defensive *has not*

been particularly discussed. Hamilton has insisted it was offensive by the former. I will send you the French collection of papers on that subject.—A paper inclosed will lead you to inform yourself on questions which may come into discussion perhaps at the next session of Congress. They were prepared *for the judges, who however will not agree* I believe *to give opinion. I informed the President by letter three* days ago that *I should resign* the last day of *September*. Consequently *I shall see you* the middle of *October*. Adieu.

OPINION ON CALLING OF CONGRESS J. MSS.

Aug. 4, 1793.

The President having pleased to propose, for consideration, the question, Whether it be proper to convene the legislature at an earlier period than that at which it is to meet by law? and at what time? I am of opinion it will be proper.

I. Because the protection of our southern frontier seems to render indispensable a war with the Creeks, which cannot be declared, nor provided for but by the legislature, nor prudently undertaken by the Executive, on account of the consequences it may involve with respect to Spain.

II. Because several legislative provisions are wanting to enable the government to steer steadily through the difficulties daily produced by the war of Europe, and to prevent our being involved in it by the incidents and perplexities to which it is constantly giving birth.

III. Because should we be involved in it, which is every day possible, however anxiously we endeavor to avoid it, the legislature meeting a month earlier will place them a month forwarder in their provisions for that state of things.

I think the first Monday in November would be a proper time for convening them, because while it would gain a month in making provisions to prevent or prepare for war, it leaves such a space of time for their assembling, as will avoid exciting alarm either at home or abroad.[1]

CABINET OPINION ON PRIVATEERS AND PRIZES

J. MSS.

Aug. 5, 1793.

At a meeting of the heads of departments & the Attorney-general at the Secretary of State's office Aug. 5, 1793.

The case of the *Swallow* letter of Marque at New York, desired to be sent out of our ports, as being a privateer, it is the opinion that there is no ground to make any order on the subject.

The *Polly* or *Republican*, in the hands of the Marshal at New York, on a charge of having been armed

[1] Sent to Washington with the accompanying letter.

"Sunday, Aug. 4, '93.

"Th. Jefferson presents his respects to the President and will pay due attention to his letter of this day. The question of convening the legislature was considered and as our opinions differed, we agreed to give them separately, which will be done tomorrow. We are to meet at 10 o'clock tomorrow to apply the rules, now approved by the President, to the several memorials & complaints as yet undecided, the result of which will be submitted to the President."

in our ports to cruize against nations at peace with the U. S. it is the opinion there is no ground to make any new order in this case.

The *Little Democrat*, the *Vainqueur de la Bastille*, the *Citoyen Genet* & the *Sans Culottes*, a letter to be written to Mr. Genet as was determined on the 3^{d} instant, and an instruction in conformity therewith be given to the Governors, Mr. Hammond to be informed thereof & to be assured the government will effectuate these former resolutions on this subject.

The *Lovely Lass*, the *Prince William Henry*, & the *Jane* of Dublin prizes to the *Citoyen Genet*. Mr. Genet to be written to as was agreed on the 3^{d} instant.

The brig *Fanny* and ship *William* reclaimed as taken within the limits of our protection, as it is expected that the court of Admiralty may very shortly reconsider whether it will take cognizance of these cases, it is thought better to take no new measure, therein for the present.

The Schooner fitting out at Boston as ment^{d} in a letter of Mr. Gore to Mr. Lear, the Governor of Massachusetts to be written to to suppress her.

Mr. Delaney's letter of the 24th of July on the question whether duties are to be paid on prize goods landed for sale, it is the opinion the duties are to be paid.

A letter from Mr. Genet of the 4th of Aug. informing the Secretary of State that certain inhabitants lately arrived from St. Domingo are combining to form a military expedition from the territory of the U. S. against the constituted authorities of the s'd

island, it is the opinion that the Governor of Maryland be informed thereof (because in a verbal communication to the Secretary of State Mr. Genet had named Baltimore as the place where the combination was forming) and that he be advised to take measure to prevent the same.

The Secretary of State and Attorney General are of opinion that Mr. Hammond be informed that measures are taking to procure restoration of the prizes the *Lovely Lass*, the *Prince William Henry* and the *Jane* of Dublin and in case that cannot be effected that Government will take the subject into further consideration.

TO THE FRENCH MINISTER[1] J. MSS.

(EDMOND CHARLES GENET)

PHILADELPHIA, August 7, 1793.

SIR,—In a letter of June 5th, I had the honor to inform you, that the President, after reconsidering, at your request, the case of vessels armed within our

[1] In relation to this letter, Jefferson wrote the President:

[Aug. 18. 1793.]

"Th: Jefferson on examination of the subject *finds* that the resolution for restoring or compensating prizes taken by the proscribed vessels was agreed to by the heads of departm^{t} & Atty Gen^{l} on the 5th. There was a difference of opinion how far it should be communicated to Mr. Hammond; the President was pleased to call at the office of Th: J. and to decide in favor of a full communication, on the same day (between 2. & 3. o'clock he believes). Th: J. in considering the subject, found it would require caution of expression in both letters, that is, to Mr. Genet & Mr. Hammond. He took therefore to the next day to propose the draughts. The President called on him in the country the next morning (the 6th) and after his departure, Th: J. went on with

ports to commit hostilities on nations at peace within the United States, had finally determined, that it could not be admitted, and desired that all those, which had been so armed, should depart from our ports. It being understood afterwards that these vessels either still remained in our ports, or had only left them to cruize on our coasts, and return again with their prizes, and that another vessel, the *Little Democrat*, had been since armed at Philadelphia, it was desired in my letter of the 12th of July, that such vessels, with their prizes, should be detained till a determination should be had of what was to be done under these circumstances. In disregard, however, of this desire, the *Little Democrat* went out immediately on a cruize.

I have it now in charge to inform you, that the President considers the United States bound, pursuant to positive assurance, given in conformity to the laws of neutrality, to effectuate the restoration of, or to make compensation for, prizes which shall have been made, of any of the parties at war with France, subsequent to the 5th day of July last, by privateers fitted out of our ports.

That it is consequently expected, that you will cause restitution to be made of all prizes taken and brought into our ports, subsequent to the above

the beginning of the letter to Gouv^r Morris, which he had begun, and had read a part of to the President. He was therefore later than usual in going to town. When he arrived there he sent the two draughts of letters to Genet & Hammond for the President's approbation. Whether they did not come back to his office till he had left town, or whether they could not be copied in time, he does not recollect; but he finds the press copy of the letter to Mr. Genet, in Mr. Taylor's handwriting, dated Aug. 7."

mentioned day, by such privateers; in defect of which, the President considers it as incumbent upon the United States to indemnify the owners of those prizes. The indemnification to be reimbursed by the French nation.

That, besides taking efficacious measures to prevent the future fitting out privateers in the ports in the United States, they will not give asylum therein to any which shall have been at any time so fitted out, and will cause restitution of all such prizes as shall be hereafter brought within our ports, by any of the said privateers.

It would have been but proper respect to the authority of the country, had that been consulted before these armaments were undertaken. It would have been satisfactory, however, if their sense of them, when declared, had been duly acquiesced in. Reparation of the injury, to which the United States have been made so involuntarily instrumental, is all which now remains, and in this your compliance cannot but be expected.

In consequence of the information given in your letter of the 4th instant that certain citizens of St. Domingo, lately arrived in the United States, were associating for the purpose of undertaking a military expedition, from the territory of the United States, against that island, the Governor of Maryland, within which state the expedition is understood to be preparing, is instructed to take effectual measures to prevent the same.

TO THE PRESIDENT OF THE UNITED STATES

J. MSS.

August 11, 1793.

Thomas Jefferson, with his respects to the President, begs leave to express in writing more exactly what he meant to have said yesterday. A journey home in the autumn is of a necessity which he cannot controul after the arrangements he has made, and when there, it would be his extreme wish to remain. But if the continuance in office to the last of December, as intimated by the President, would, by bringing the two appointments nearer together, enable him to marshal them more beneficially to the public, & more to his own satisfaction, either motive will suffice to induce Th J. to continue till that time. He submits it therefore to the President's judgment, which he will be glad to receive when convenient, as the arrangements he had taken may require some change.

TO JAMES MADISON MAD. MSS.

August 11, 1793.

DEAR SIR,—I wrote you last on the 3d. inst. Yours of July 30, came to hand yesterday. Besides the present which goes by post, I write you another to-day to go by mr. D. Randolph, who sets out the day after to-morrow for Monticello, but whether by the direct route or via Richmond is not yet decided. I shall desire that letter to be sent to you by express from Monticello. I have not been able to lay my hands on the newspaper which gave a short but true view of the intention of the proclamation. However,

having occasion to state it in a paper which I am preparing, I have done it in the following terms, and I give you the very words from the paper, because just as I had finished so far, 812.15.[1] called on me. I read it to him. He said it presented fairly his view of the matter. He recalled to my mind that I had, at the time, opposed it's being made a declaration of neutrality on the ground that the executive was not the competent authority for that, &, therefore, that it was agreed the instrument should be drawn with great care. My statement is in these words. "On the declaration of war between France & England, the U. S. being at peace with both, their situation was so new and unexperienced by themselves, that their citizens were not, in the first instant, sensible of the new duties resulting therefrom, & of the laws it would impose *even on their dispositions* towards the belligerent powers. Some of them imagined (and chiefly their transient sea-faring citizens) that they were free to indulge those dispositions, to take side with either party, & enrich themselves by depredations on the commerce of the other, & were meditating enterprises of this nature, as was said. In this state of the public mind, and before it should take an erroneous direction difficult to set right, & dangerous to themselves & their country, the President thought it expedient, by way of Proclamation, to remind our fellow-citizens that we were in a state of peace with all the belligerent powers; that in that state it was our duty neither to aid nor injure any; to exhort & warn them against acts which might contravene

[1] Edmund Randolph.

this duty, & particularly those of positive hostility, for the punishment of which the laws would be appealed to, and to put them on their guard also as to the risks they would run if they should attempt to carry articles of contraband to any."—"Very soon afterwards we learnt that he was undertaking to authorize the fitting & arming vessels in that port, enlisting men, foreigners & citizens, & giving them commissions to cruise and commit hostilities against nations at peace with us, that these vessels were taking & bringing prizes into our ports, that the Consuls of France were assuming to hold courts of Admiralty on them to try, condemn & authorize their sale as legal prizes, & all this before mr. —— had presented himself or his credentials to the President, before he was received by him, without his consent or consultation, & directly in contravention of the state of peace existing & declared to exist in the Pres's proclamn, & which it was incumbent on him to preserve till the Constitutional authority should otherwise declare. These proceedings became immediately, as was naturally to be expected, the subject of complaint by the representative here of that power against whom they would chiefly operate, &c." This was the true sense of the proclmn in the view of the draughtsman & of the two signers; but H. had other views. The instrument was badly drawn, and made the P. go out of his line to declare things which, tho true, it was not exactly his province to declare. The instrument was communicated to me after it was drawn, but I was busy, and only run an eye over it to see that it was not made a declara-

tion of neutrality, & gave it back again, without, I believe, changing a tittle.

Pacificus has now changed his signature to "No Jacobin." Three papers under this signature have been publd in Dunlap. I suppose they will get into Fenno. They are commentaries on the laws of nations & on the different parts of our treaty with France. As yet they have presented no very important heresy.—Congress will not meet till the legal day. It was referred to a meeting at my office to consider and advise on it. I was for calling them. Kn. against it. H. said his judgment was against it. But he would join any two who should concur so as to make a majority either way. R. was pointedly against it. We agreed to give our opinions separately, & tho' the P. was in his own judgment for calling them, he acquiesced in the majority. I pass on to the other letter; so adieu. Yours affectionately.

CABINET OPINION ON PRIZES W. MSS.

August 15, 1793.

That the Minister of the French republic be informed that the President considers the United States as bound by positive assurances, given in conformity to the laws of neutrality, to effectuate the restoration of, or to make compensation for, prizes which shall have been made of any of the parties at war with France, subsequent to the 5th day of June last, by privateers fitted out of their ports.

That it is consequently expected that he will cause restitution to be made of all prizes taken and brought into our ports subsequent to the above mentioned day by such privateers; in defect of which the President considers it as incumbent upon the United States to indemnify the owners of those prizes; the indemnification to be reimbursed by the French nation.

That besides taking efficacious measures to prevent the future fitting out of privateers in the ports of the United States, they will not give asylum therein to any which shall have been at any time so fitted out, and will cause restitution of all such prizes as shall be hereafter brought within their ports by any of the said privateers.

That instructions be sent to the respective Governors in conformity to the above communication.

The foregoing having been duly considered, and being now unanimously approved, they are submitted to the President of the United States.

TO THE U. S. MINISTER TO FRANCE[1] J. MSS.

(GOUVERNEUR MORRIS)

PHILA., Augt. 16, 1793.

SIR,—In my letter of June 13th, I enclosed to you the copies of several letters which had passed be-

[1] A history of the Cabinet proceedings on this subject is given in vol. I, pages 252–3, and 259, as well as in the Cabinet opinion of Aug. 23, post. In *Hamilton's Works* is given a memorandum intended as an outline of this letter, as follows:

"I. Explanation of fitting our privateers in Charleston, put on footing of there being no law.

tween Mr. Ternant, Mr. Genet & myself, on the occurrences to which the present war had given rise within our ports. The object of this communication was to enable you to explain the principles on which our government was conducting itself towards the belligerent parties; principles which might not in all cases be satisfactory to all, but were meant to be just

II. Letter persisting in objection to it.
III. Reclaims Gideon Henfield.
IV. Very moderate answer, that courts will do right.
V. Concerning Sloop *Republican:*
1. Issuing commissions a mere consular act.
2. Insists on right of arming for defence.
3. Speaks of treaty permitting to enter.
4. Armed—to equip themselves.
5. France always in practice of issuing commissions.
6. Will give orders to consuls to take precautions to respect our territory—political opinions of President.
7. Insists on right of arming vessels—abandonment unworthy its friends.
VI. In waiting until representatives of sovereign had resolved to adopt or reject.
VII. Complaint of proceedings of District Court against the *William* —persons labor secretly to have misunderstood.
VIII. Letter concerning debt—accomplish *infernal system*—since the federal government *without consulting Congress.*
IX. Awkwardness—Governor avails himself of political opinions.
X. Letter—opinions, private and public, of President—on s'est empressé Je ne scais sous quelle influence impression étrangères —complaints of obstruction to consular jurisdiction.
XI. Letter concerning sloop *William* requiring relinquishment.
XII. Letter concerning another vessel in same situation.
XIII. Letter concerning *Little Democrat*—letter on account of the *state* to augment the marine of France—commission, &c.
Blamed in a conversation the judicial proceedings of the consul—ought only to have made a ministerial inquiry.
1. Case of the *Swallow.*"

Another paper on the same subject in Hamilton's writing is in the Jefferson MSS., and is endorsed by Jefferson: "Hamilton's plan of remonstrance against Genet, when it was concluded to write Gouver-

and impartial to all. Mr. Genet had been then but a little time with us; & but a little more was necessary to develop in him a character and conduct so unexpected, & so extraordinary, as to place us in the most distressing dilemma, between our regard for his nation, which is constant & sincere, & a regard

neur Morris, as was afterwards done, Aug. 16, 93." As it differs materially it is here added:

Aug. 2, 93.

"I. Discussion of the points in controversy:

1. Fitting out privateers—1, as it stands on the general law of Nations—2, upon the Treaties.

2. Inlistment of our Citizens as connected with it, with reference to his *observations*.

II. Exercise of Consular Jurisdiction.

1. As it stands on general law of Nations.

2. Upon Treaties.

3. Upon the principles of France herself—see Vatel.

History of her conduct in regard to these points:

I. Impropriety of what was done at Charleston before he had come to the seat of government [and after he?] has known its sentiments, &c.

II. The expectation he gave in conversation & in writing that he would not repeat the *fitting of privateers* and would prevent improper exercise of Consular jurisdiction.

III. His contravention of these expectations, citing the different instances as to fitting out privateers and condemning prizes.

IV. Attempting to justify them as matters of right.

Enforce the idea that if his constructions were right his course was wrong.

Ought not have persisted in doing what was contrary to the opinion of this Government, but ought to have referred the matter to National discussion, &c.

V. Impropriety of his having *reclaimed* our offending citizens as a matter of right.

VI. Disregard of the intimation of the Government with respect to Privateers *Citizen Genet* and *Sans Culotte*.

All the particulars.

VII. Disregard of sense of Government in regard to *Little Democrat*.

Stating particulars.

VIII. Offensive style of the communications, citing instances with summary comments.

IX. In connection with the last, the excessive pretentions of the

for our laws, the authority of which must be maintained; for the peace of our country, which the Executive magistrate is charged to preserve; for it's honour, offended in the person of that magistrate; & for it's character grossly traduced in the conversations & letters of this gentleman. In the course

Vice-Consuls disrespectfully urged & patronized by him, by transmitting and upholding their communications.

Improprieties of conduct in other respects:

I. His being President of a political society—Society of Friends of Liberty & Equality.

II. His declaration to Mr. Dallas that he would appeal from the President to the People.

General observations on the inference to be drawn from such circumstances—an inference fortified by the conduct of his Secretary, Mr. Pascal, stating it with proper remarks on the impropriety of a privileged person pursuing such a course."

On the same subject Edmund Randolph wrote Jefferson:

"PHILADELPHIA, August 4. 1793.

"I can never believe that the impeachment of Mr. G. should be drawn from any other sources, than his written and verbal communications with you. That he is president of a particular society, that his secretary may have written inflammatory queries, &c. may be reasons, privately operating to the demand of his recal, I shall not absolutely deny; because foreign ministers may give causes of displeasure, and render themselves unacceptable for intercourse by acts, which may not however be strong enough to become articles of formal accusation. But they will not satisfy the American mind, which constitutes the soul of our government.

In the letter therefore, to be written to him, the people, to whom the whole affair will sooner or later be exposed, ought to be kept in view: and it ought not to be forgotten, that Mr. G. has some zealous partizans, and the French nation too many to suffer subtleties or caprices to justify the harsh measure.

I do not conceive it to be any part of what you have requested of me, or in any degree necessary, to suggest the outlines of these remarks, which ought to precede the charges. It is only for me, to assign the reasons, upon which I grounded my opinion for a recall.

1. His assurances, that no other commissions should be granted to privateers within the U. S. and the repetition notwithstanding.

of these transactions, it has been a great comfort to us to believe that none of them were within the intentions or expectations of his employers. These had been too recently expressed in acts which nothing could discolour, in the letters of the Executive

2. The continuance of the consuls within his controul and knowledge, to exercise the functions of the admiralty; his declarations to the contrary notwithstanding.

3. His sending off the *Little Democrat* against the wishes of the government expressed to him.

4. His reprehensible language concerning and addressed to the Executive; discarding however, all ambiguities.

5. His undertaking to reclaim those citizens of the U. S. who had been prosecuted for entering on board of French privateers."

The following memorandum in Jefferson's writing apparently indicates his own ideas:

"Analysis of the letter.

Object of the Proclamation.

Genet's arrival at Charleston, & conduct till his arrival at Philadelphia. His subsequent conduct & correspondence reduced under the following heads.

1. His right to arm in our ports, enlist our citizens, reclaim ag^{t} their punishment.
2. The right of the Consuls to hold Courts of Admiralty. Courts of the U. S. to try questions of Prize or not prize. Of the U. S. to protect vessels in their waters & on their coasts.
3. Requisition to drive away letters of Marque, as Privateers.
4. Claim to sell prize goods *duty free.*
5. Compl^{d} that French goods are taken by the English out of American bottoms.
6. His assuming *to act* in opposition to the declared will of the govrm^{t} within their territory.

Observations

on his dictating what subjects are proper for Congress, when they should be called &c

His disrespectful expressions of the President of the nation.

Proofs of our friendly dispositions—particular instances.

His recall urged—& speedily."

Finally, another paper in Jefferson's writing throws further light on the framing of the letter.

Council, in the letter & decrees of the National Assembly, & in the general demeanor of the nation towards us, to ascribe to them things of so contrary a character. Our first duty therefore was to draw a strong line between their intentions & the proceedings of their minister; our second, to lay those proceedings faithfully before them.

On the declaration of war between France & England, the U. S. being at peace with both, their situa-

"Alteration proposed in the Letter to G. Morris, in consequence of an examination of the treaties between France & Great Britain.

"Suppose a war between these states & Gr. Britain by the treaties between France & Gr. Britain, in force at the signature of ours, we could not have been permitted to arm in the ports of France. She could not then have meant, in this Article, to give us such a right. She has manifested the same sense of it again in her subsequent treaty with England, made 8. years after the date of ours, stipulating in the 16th Article of it, in the same words with our 22d, that foreign privateers, *not being subjects of either crown*, should not arm against either, in the ports of the other. If this had amounted to an affirmative stipulation that the subjects of the other crown might arm in her ports *against us*, it would have been in direct contradiction to her 22d Article with us. So that to give to these negative stipulations an affirmative effect is to render them inconsistent with each other, & with good faith: to give them only their negative & natural effect, is to reconcile them to one another, & to good faith; & is clearly to adopt the sense in which France herself has expounded them. We may justly conclude then that the article only obliges us to refuse this right, in the present case, to Great Britain &c."

At the bottom of this paper Hamilton has written:

"'Not *being subjects* of either crown' said to be in the same words with our 22 Article.—The words of our Article are 'non apartenant' *not belonging* &c. The sense is the same but not the words.

"Approved with this remark, which merely regards accuracy of expression. A. Hamilton."

And Jefferson has added in margin: "Submitted essentially in the same words with our 22."

Randolph has in turn endorsed: "I am content either way. Edm. Randolph." And below this Jefferson wrote: "The Sec. at War has seen & approved."

tion was so new & unexperienced by themselves, that their citizens were not in the first instant, sensible of the new duties resulting therefrom, & of the restraints it would impose even *on their dispositions* towards the belligerent powers. Some of them imagined (and chiefly their transcient sea-faring citizens) that they were free to indulge those dispositions, to take side with either party, and enrich themselves by depredations on the commerce of the other, & were meditating enterprises of this nature, as there was reason to believe. In this state of the public mind, and before it should take an erroneous direction, difficult to be set right and dangerous to themselves & their country, the President thought it expedient, through the channel of a proclamation, to remind our fellow-citizens that we were in a state of peace with all the belligerent powers, that in that state it was our duty neither to aid nor injure any, to exhort & warn them against acts which might contravene this duty, & particularly those of positive hostility, for the punishment of which the laws would be appealed to; & to put them on their guard also, as to the risks they would run, if they should attempt to carry articles of contraband to any. This proclamation, ordered on the 19th & signed the 22d day of April, was sent to you in my letter of the 26th of the same month.

On the day of it's publication, we received, through the channel of the newspapers,[1] the first intimation that mr. Genet had arrived on the 8th of the month at Charleston, in the character of Minister Plenipo-

[1] See papers Apr. 22.—*T. J.*

tentiary from his nation to the U. S., and soon after, that he had sent on to Philadelphia the vessel in which he came, & would himself perform the journey by land. His landing at one of the most distant ports of the Union from his points both of departure & destination, was calculated to excite attention; and very soon afterwards, we learnt that he was undertaking to authorize the fitting and arming vessels in that port, enlisting men, foreigners & citizens, & giving them commissions to cruise & commit hostilities on nations at peace with us, that these vessels were taking and bringing prizes into our ports, that the Consuls of France were assuming to hold courts of admiralty on them, to try, condemn, & authorize their sale as legal prize, and all this before mr. Genet, had presented himself or his credentials to the President, before he was received by him, without his consent or consultation, & directly in contravention of the state of peace existing, & declared to exist in the President's proclamation, & incumbent on him to preserve till the constitutional authority should otherwise declare. These proceedings became immediately, as was naturally to be expected, the subject of complaint by the representative here of that power against whom they would chiefly operate. The British minister presented several memorials thereon, to which we gave the answer of May 15th, heretofore enclosed to you, corresponding in substance with a letter of the same date written to mr. Ternant, the minister of France then residing here, a copy of which I send herewith. On the next day mr. Genet

reached this place,[1] about five or six weeks after he had arrived at Charleston, & might have been at Philadelphia, if he had steered for it directly. He was immediately presented to the President, & received by him as the minister of the Republic; and as the conduct before stated seemed to bespeak a design of forcing us into the war without allowing us the exercise of any free will in the case, nothing could be more assuaging than his assurances to the President at his reception, which he repeated to me afterwards in conversation, & in public to the citizens of Philadelphia in answer to an address from them, that on account of our remote situation & other circumstances, France did not expect that we should become a party to the war, but wished to see us pursue our prosperity & happiness in peace. In a conversation a few days after, mr. Genet told me that M. de Ternant had delivered him my letter of May 15th. He spoke something of the case of the *Grange*, & then of the armament of Charleston, explained the circumstances which had led him to it before he had been received by the government, & consulted its will, expressed a hope that the President had not so absolutely decided against the measure but that he would hear what was to be said in support of it, that he would write me a letter on the subject, in which he thought he could justify it under our treaty; but that if the President should finally determine otherwise, he must submit; for that assuredly his instructions were to do what would be agreable to us. He accordingly wrote the letter of May 27th. The President took the case again into

[1] See Public papers of May 16, 17.—*T. J.*

consideration, and found nothing in that letter which could shake the grounds of his former decision. My letter of June 5 notifying this to him, his of June 8 & 14, mine of the 17, & his again of the 22d, will shew what further passed on this subject, & that he was far from retaining his disposition to acquiesce in the ultimate will of the President.—It would be tedious to pursue this and our subsequent correspondencies through all their details. Referring therefore for these to the letters themselves, which shall accompany this, I will present a summary view only of the points of difference which have arisen, & the grounds on which they rest.

1. Mr. Genet asserts his right [1] of arming in our ports & of enlisting our citizens, & that we have no right to restrain him or punish them. Examining this question under the law of nations, founded on the general sense & usage of mankind, we have produced proofs,[2] from the most enlightened & approved writers on the subject,[3] that a Neutral nation must, in all things relating to the war, observe an exact impartiality towards the parties; that favors to one to the prejudice of the other, would import a fraudulent neutrality, of which no nation would be the dupe; that no succour should be given to either, unless stipulated by treaty, in men, arms, or anything else directly serving for war; that the right of raising troops being one of the rights of sovereignty,[4] & consequently appertaining exclusively to the nation itself, no foreign power or person can levy men,

[1] Ires June 8. 22. 1, May 27.—*T. J.*
[2] June 17.—*T. J.*
[3] Vattel, L 3 § 104.—*T. J.*
[4] Wolf, 1174. Vattel. 3. § 15.—*T. J.*

within its territory, without it's consent; & he who does, may be rightfully & severely punished: that if the U. S. have a right to refuse the permission to arm vessels & raise men within their ports & territories, they are bound by the laws of neutrality to exercise that right, & to prohibit such armaments & enlistments. To these principles of the law of nations mr. Genet answers, by calling them "diplomatic subtleties," and "aphorisms of Vattel and others." [1] But something more than this is necessary to disprove them; and till they are disproved, we hold it certain that the law of nations & the rules of neutrality forbid our permitting either party to arm in our ports.

But mr. Genet says, that the 22d article of our treaty allows him *expressly* to arm in our ports.[2] Why has he not quoted the very words of that article *expressly* allowing it? For that would have put an end to all further question. The words of the article, "it shall not be lawful for any foreign privateers not belonging to subjects of the M. C. King, nor citizens of the sd U. S. who have commissions from any Prince or State in enmity with either nation, to fit their ships in the ports of either one or the other of the aforesaid parties." Translate this from the general terms in which it here stands, into the special case produced by the present war. "Privateers not belonging to France or the U. S., and having commissions from the enemies of one of them," are, in the present state of things, "British, Dutch & Spanish privateers." Substituting these then for the

[1] June 22.—*T. J.*

[2] June 22. 8.—*T. J.*

equivalent terms, it will stand thus, "it shall not be lawful for British, Dutch or Spanish privateers to fit their ships in the ports of the U. S." Is this an *express* permission to France to do it? Does the negative to the enemies of France, & silence as to France herself, imply an affirmative to France? Certainly not; it leaves the question as to France open, & free to be decided according to circumstances. And if the parties had meant an affirmative stipulation, they would have provided for it expressly; they would never have left so important a point to be inferred from mere silence or implications. Suppose they had desired to stipulate a refusal to their enemies, but nothing to themselves; what form of expression would they have used? Certainly the one they have used; an express stipulation as to their enemies, & silence as to themselves. And such an intention corresponds not only with the words, but with the circumstances of the times. It was of value to each party to exclude it's enemies from arming in the ports of the other, & could in no case embarrass them. They therefore stipulated so far mutually. But each might be embarrassed by permitting the other to arm in it's ports. They therefore would not stipulate to permit that. Let us go back to the state of things in France when this treaty was made, and we shall find several cases wherein France could not have permitted us to arm in her ports. Suppose a war between these States & Spain. We know that, by the treaties between France & Spain, the former could not permit the enemies of the latter to arm in her ports. It was honest in her

therefore not to deceive us by such a stipulation. Suppose a war between these States & Great Britain. By the treaties between France and Gr. Britain, in force at the signature of ours, we could not have been permitted to arm in the ports of France. She could not then have meant in this article to give us such a right. She has manifested the same sense of it again in her subsequent treaty with England, made 8. years after the date of ours, stipulating in the 16th article of it, as in our 22d, that foreign privateers, *not being subjects of either crown*, should not arm against either in the ports of the other. If this had amounted to an affirmative stipulation that the subjects of the other crown might arm in her ports *against us*, it would have been in direct contradiction to her 22d article with us. So that to give to these negative stipulations an affirmative effect, is to render them inconsistent with each other, & with good faith; to give them only their negative & natural effect, is to reconcile them to one another, & to good faith, & is clearly to adopt the sense in which France herself has expounded them. We may justly conclude, then, that the article only obliges us to refuse this right, in the present case, to Great Britain & the other enemies of France. It does not go on to give it to France, either expressly or by implication. We may then refuse it. And since we are bound by treaty to refuse it to the one party, and are free to refuse it to that other, we are bound by the laws of neutrality to refuse it to that other.—The aiding either party then with vessels, arms, or men, being unlawful by the law of Nations, & not rendered

lawful by the treaty, it is made a question whether our citizens, joining in these unlawful enterprises, may be punished?

The U S. being in a state of peace with most of the belligerent powers by treaty, & with all of them by the laws of nature, murders & robberies committed by our citizens, within our territory, or on the high seas, or those with whom we are so at peace, are punishable equally as if committed on our own inhabitants.—If I might venture to reason a little formally, without being charged with running into "subtleties & aphorisms," I would say that if one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all it's citizens) has a right to go to war, by the authority of it's individual citizens. But this is not true either on the general principles of society, or by our Constitution, which gives that power to Congress alone, & not to the citizens individually. Then the first position was not true; and no citizen has a right to go to war of his own authority; and, for what he does without right, he ought to be punished.—Indeed, nothing can be more obviously absurd than to say, that all the citizens may be at war, & yet the nation at peace. It has been pretended, indeed, that the engagement of a citizen in an enterprise of this nature, was a divestment of the character of citizen, & a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration, & other acts manifesting their intention, & may then become the

subjects of another power, & free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disinfranchise himself; nor render treason, for instance, innocent by giving it the force of a dissolution of the obligation of the criminal to his country. Accordingly, in the case of Henfield, a citizen of these States, charged with having engaged in the port of Charleston, in an enterprise against nations at peace with us, & with having joined in the actual commission of hostilities, the Atty General of the U S., in an official opinion, declared that the act with which he was charged was punishable by law. The same thing has been unanimously declared by two of the circuit courts of the U S., as you will see in the charges of chief justice Jay, delivered at Richmond, and Judge Wilson, delivered at Philadelphia, both of which are herewith sent. Yet mr. Genet, in the moment he lands at Charleston, is able to tell the Governor, & continues to affirm in his correspondence here, that no law of the U S authorizes their government to restrain either it's own citizens or the foreigners inhabiting it's territory, from warring against the enemies of France. It is true, indeed, that, in the case of Henfield, the jury which tried, absolved him. But it appeared on the trial, that the crime was not knowingly & wilfully committed; that Henfield was ignorant of the unlawfulness of

his undertaking; that in the moment he was apprised of it he shewed real contrition; that he had rendered meritorious services during the late war, & declared he would live & die an American. The jury, therefore, in absolving him, did no more than the constitutional authority might have done, had they found him guilty: the Constitution having provided for the pardon of offences in certain cases, & there being no case where it would have been more proper than where no offence was contemplated. Henfield, therefore, was still an American citizen, and mr. Genet's reclamation of him was as unauthorized as the first enlistment of him.

2. Another doctrine advanced by mr. Genet is, That our courts can take no cognizance of questions Whether vessels, *held by theirs*, as prizes, are lawful prizes or not; that this jurisdiction belongs exclusively to their Consulates here, which have been lately erected by the National Assembly into complete courts of admiralty.

Let us consider, first, what is the extent of jurisdiction which the Consulates of France may rightfully exercise here. Every nation has of natural right, entirely and exclusively, all the jurisdiction which may be rightfully exercised in the territory it occupies. If it cedes any portion of that jurisdiction to judges appointed by another nation, the limit of their power must depend on the instrument of cession. The U S & France have, by their Consular convention, given mutually to their Consuls jurisdiction in certain cases especially enumerated. But that Convention gives to neither the power of es-

tablishing complete courts of admiralty within the territory of the other, not even of deciding the particular question of Prize, or not prize. The Consulates of France, then, cannot take judicial cognizance of those questions here. Of this opinion mr. Genet was when he wrote his letter of May 27, wherein he promises to correct the error of the Consul at Charleston, of whom, in my letter of the 15th, I had complained, as arrogating to himself that jurisdiction; tho' in his subsequent letters he has thought proper to embark in the errors of his Consuls.[1]

But the U S, at the same time, do not pretend any right to try the validity of captures made *on the high seas*, by France, or any other nation, over it's enemies. These questions belong, of common usage, to the sovereign of the Captor, & whenever it is necessary to determine them, resort must be had to his courts. This is the case provided for in the 17th article of the treaty, which says, that such prizes shall not be arrested, nor cognizance taken of the validity thereof; a stipulation much insisted on by mr. Genet & the Consuls, & which we never thought of infringing or questioning. As the validity of captures then, made *on the high seas* by France over it's enemies, cannot be tried within the U S by their Consuls, so neither can it by our own courts. Nor is this the Question, between us, tho' we have been misled into it.

The real question is, Whether the U S have not a right to protect vessels within their waters & on their coasts? The *Grange* was taken within the Delaware,

[1] June 14–22.—*T. J.*

between the shores of Jersey & of the Delaware state, & several miles above its mouth. The seizing her was a flagrant violation of the jurisdiction of the U S. Mr. Genet, however, instead of apologizing, takes great merit in his letters for giving her up.— The *William* is said to have been taken within two miles of the shores of the U S. When the Admiralty declined cognizance of the case, she was delivered to the French consul, according to my letter of June 25, to be kept till the Executive of the U S should examine into the case; & mr. Genet was desired by my letter of June 29, to have them furnished with the evidence, on behalf of the captors, as to the place of capture. Yet to this day it has never been done. The brig *Fanny* was alleged to be taken within five miles of our shore; the *Catharine* within two miles & a half. It is an essential attribute of the jurisdiction of every country to preserve peace, to punish acts in breach of it, & to restore property taken by force within it's limits. Were the armed vessel of any nation to cut away one of our own from the wharves of Philadelphia, & to chuse to call it a prize, would this exclude us from the right of redressing the wrong? Were it the vessel of another nation, are we not equally bound to protect it, while within our limits? Were it seized in any other waters, or on the shores of the U S, the right of redressing is still the same; & humble indeed would be our condition, were we obliged to depend for that on the will of a foreign Consul, or on negociation with diplomatic agents. Accordingly, this right of protection, within it's waters, & to a reasonable distance on it's coasts,

has been acknoleged by every nation, & denied to none: and if the property seized be yet within their power, it is their right & duty to redress the wrong themselves.—France herself has asserted the right in herself, & recognized it in us, in the 6th article of our treaty, where we mutually stipulate that we will, *by all the means in our power* (not by negociation), protect and defend each other's vessels & effects in our ports or roads, or on the seas near our countries, & recover & restore the same to the right owners. The United Netherlands, Prussia & Sweden, have recognized it also in the treaties with us; and, indeed, it is a standing formule, inserted in almost all the treaties of all nations, & proving the principle to be acknoleged by all nations.

How, & by what organ of the government, whether Judiciary or Executive, it shall be redressed, it is not yet perfectly settled with us. One of the subordinate courts of admiralty has been of opinion, in the first instance, in the case of the ship *William*, that it does not belong to the Judiciary. Another, perhaps, may be of a contrary opinion. The question is still *sub judice*, and an appeal to the court of last resort will decide it finally. If finally the Judiciary shall declare that it does not belong to the *civil* authority, it then results to the Executive, charged with the direction of the *military* force of the Union, & the conduct of it's affairs with foreign nations. But this is a mere question of internal arrangement between the different departments of the government, depending on the particular diction of the laws & constitution; and it can in nowise concern

a foreign nation to which department these have delegated it.

3. Mr. Genet, in his letter of July 9, requires that the ship *Jane*, which he calls an English privateer, shall be immediately ordered to depart; and, to justify this, he appeals to the 22d article of our treaty, which provides that it shall not be lawful for any foreign *privateer* to fit their ships in our ports, to sell *what they have taken*, or purchase victuals, &c. The ship *Jane* is an English merchant vessel, which has been many years employed in the commerce between Jamaica & these states. She brought here a cargo of produce from that island, & was to take away a cargo of flour. Knowing of the war when she left Jamaica, & that our coast was lined with small French privateers, she armed for her defence, & took one of those commissions usually called letters of marque. She arrived here safely without having had any rencounter of any sort. Can it be necessary to say that a merchant vessel is not a privateer? That tho' she has arms to defend herself in time of war, in the course of her regular commerce, this no more makes her a privateer, than a husbandman following his plough, in time of war, with a knife or pistol in his pocket, is thereby made a soldier? The occupation of a privateer is attack and plunder, that of a merchant-vessel is commerce & self-preservation. The article excludes the former from our ports, & from selling *what she has taken*, that is, what she has acquired by war, to shew it did not mean the merchant vessel, & what she had acquired by commerce. Were the merchant vessels

coming for our produce forbidden to have any arms for their defence, every adventurer who has a boat or money enough to buy one, would make her a privateer, our coasts would swarm with them, foreign vessels must cease to come, our commerce must be suppressed, our produce remain on our hands, or at least that great portion of it which we have not vessels to carry away, our ploughs must be laid aside & agriculture suspended. This is a sacrifice no treaty could ever contemplate, and which we are not disposed to make out of mere complaisance to a false definition of the term *privateer*.—Finding that the *Jane* had purchased new carriages to mount two or three additional guns, which she had brought in her hold, & that she had opened additional port-holes for them, the carriages were ordered to be relanded, the additional port-holes stopped, & her means of defence reduced, to be exactly the same at her departure, as at her arrival. This was done on the general principle of allowing no party to arm within our ports.

4. The 17th. article of our treaty leaves armed vessels free to *conduct*, whithersoever they please, the ships & goods taken from their enemies without paying any duty, & to depart and be conducted freely to the places expressed in their commissions, which the captain shall be obliged to shew. It is evident, that this article does not contemplate a freedom *to sell their prizes* here: but on the contrary, a *departure* to some other place, always to be expressed in their commission, where their validity is to be finally adjudged. In such case, it would be as

unreasonable to demand duties on the goods they had taken from an enemy, as it would be on a cargo of a merchant vessel touching in our ports for refreshment or advices; and against this the article provides. But the armed vessels of France have been also admitted to land & sell their prize goods here for consumption; in which case, it is as reasonable they should pay duties, as the goods of a merchantman landed & sold for consumption. They have however demanded, & as a matter of right, to sell them free of duty, a right, they say, given by this article of the treaty, though the article does not give the right to sell at all. Where a treaty does not give the principal right of selling, the additional one of selling duty free cannot be given; & the laws in admitting the principal right of selling, may withhold the additional one of selling duty free.—It must be observed, that our revenues are raised almost wholly on imported goods. Suppose prize goods enough should be brought in to supply our whole consumption. According to their construction we are to lose our whole revenue. I put the extreme case to evince, more extremely, the unreasonableness of the claim. Partial supplies would affect the revenue but partially. They would lessen the evil, but not the error, of the construction; and I believe we may say, with truth, that neither party had it in contemplation, when penning this article, to abandon any part of it's revenue for the encouragement of the sea-robbers of the other.

5. Another source of complaint with mr. Genet has been that the English take French goods out of

American vessels, which he says is against the L. of nations & ought to be prevented by us. On the contrary, we suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, & an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle which subjects merchant vessels to be stopped at sea, searched, ransacked, led out of their course, has induced several nations latterly to stipulate against it by treaty, & to substitute another in it's stead, that free bottoms shall make free goods, and enemy bottoms enemy goods; a rule equal to the other in point of loss and gain, but less oppressive to commerce. As far as it has been introduced, it depends on the treaties stipulating it, & forms exceptions, in special cases, to the general operation of the Law of nations. We have introduced it into our treaties with France, Holland & Prussia; & French goods found by the two latter nations in American bottoms are not made prize of. It is our wish to establish it with other nations. But this requires their consent also, is a work of time, & in the meanwhile, they have a right to act on the general principle, without giving to us or to France cause of complaint. Nor do I see that France can lose by it on the whole. For tho' she loses *her* goods when found in our vessels by the nations with whom we have no treaties, yet she gains *our* goods, when found in the vessels of the same and all other nations; and we believe the latter mass to be greater than the former.—It is to be lamented, indeed, that the general principle has operated so cruelly in the

dreadful calamity which has lately happened in St. Domingo. The miserable fugitives, who, to save their lives, had taken asylum in our vessels, with such valuable & portable things as could be gathered in the moment out of the ashes of their houses & wrecks of their fortunes, have been plundered of these remains by the licensed sea-rovers of their enemies. This has swelled, on this occasion, the disadvantages of the general principle, that "an enemy's goods are free prize in the vessels of a friend." But it is one of those deplorable & unforeseen calamities to which they expose themselves who enter into a state of war, furnishing to us an awful lesson to avoid it by justice & moderation, & not a cause or encouragement to expose our own towns to the same burning and butcheries, nor of complaint because we do not.

6. In a case like the present, where the Missionary of one government construes differently from that to which he is sent, the treaties & laws which are to form a common rule of action for both, it would be unjust in either to claim an exclusive right of construction. Each nation has an equal right to expound the meaning of their common rules; & reason & usage have established, in such cases, a convenient & well-understood train of proceeding. It is the right & duty of the foreign missionary to urge his own constructions, to support them with reasons which may convince, and in terms of decency & respect which may reconcile the government of the country to a concurrence. It is the duty of that government to listen to his reasonings with attention and candor,

& to yield to them when just. But if it shall still appear to them that reason & right are on their side, it follows of necessity, that exercising the sovereign powers of the country, they have a right to proceed on their own constructions & conclusions as to whatever is to be done within their limits. The Minister then refers the case to his own government, asks new instructions, &, in the meantime, acquiesces in the authority of the country. His government examines his constructions, abandons them if wrong, insists on them if right, and the case then becomes a matter of negotiation between the two nations. Mr. Genet, however, assumes a new and bolder line of conduct. After deciding for himself ultimately, & without respect to the authority of the country, he proceeds to do what even his sovereign could not authorize, to put himself within the country on a line with it's government, to act as co-sovereign of the territory; he arms vessels, levies men, gives commissions of war, independently of them, & in direct opposition to their orders & efforts. When the government forbids their citizens to arm & engage in the war, he undertakes to arm & engage them. When they forbid vessels to be fitted in their ports for cruising on nations with whom they are at peace, he commissions them to fit and cruise. When they forbid an unceded jurisdiction to be exercised within their territory by foreign agents, he undertakes to uphold that exercise, & to avow it openly. The privateers *Citoyen Genet & Sans Culottes* having been fitted out at Charleston (though without the permission of the government, yet before it was

forbidden) the President only required they might leave our ports, & did not interfere with their prizes. Instead, however, of their quitting our ports, the *Sans Culottes* remains still, strengthening & equipping herself, & the *Citoyen Genet* went out only to cruise on our coast, & to brave the authority of the country by returning into port again with her prizes.—Tho' in the letter of June 5 the final determination of the President was communicated, that no future armaments in our ports should be permitted, the *Vainqueur de la Bastille* was afterwards equipped & commissioned in Charleston, the *Anti-George* in Savannah, the *Carmagnole* in Delaware, a schooner & a sloop in Boston, & the *Polly* or *Republican* was attempted to be equipped in N. York, & was the subject of reclamation by mr. Genet, in a style which certainly did not look like relinquishing the practice. The *Little Sarah* or *Little Democrat* was armed, equipped & manned, in the port of Philadelphia, under the very eye of the government, as if meant to insult it. Having fallen down the river, & being evidently on the point of departure for a cruise, mr. Genet was desired in my letter of July 12, on the part of the President, to detain her till some inquiry & determination on the case should be had. Yet within three or four days after, she was sent out by orders from mr. Genet himself, & is, at this time, cruising on our coasts, as appears by the protest of the master of one of our vessels maltreated by her.

The government thus insulted & set at defiance by mr. Genet, committed in it's duties & engage-

ments to others, determined still to see in these proceedings but the character of the individual & not to believe, & it does not believe, that they are by instructions from his employers. They had assured the British minister here, that the vessels already armed to their ports should be obliged to leave them, and that no more should be armed in them. Yet more had been armed, & those before armed had either not gone away, or gone only to return with new prizes. They now informed him that the order for departure should be enforced, & the prizes made contrary to it should be restored or compensated. The same thing was notified to mr. Genet in my letter of Aug. 7. and that he might not conclude the promise of compensation to be of no concern to him, & go on in his courses, he was reminded that it would be a fair article of account against his nation.

Mr. Genet, not content with using our force, whether we will or not, in the military line against nations with whom we are at peace, undertakes also to direct the civil government; and particularly for the Executive & Legislative bodies, to pronounce what powers may or may not be exercised by the one or the other. Thus, in his letter of June 8 he promises to respect the political opinions of the President, *till the Representatives shall have confirmed or rejected them:* as if the President had undertaken to decide what belonged to the decision of congress. In his letter of June 14., he says more openly, that the President ought not to have taken on himself to decide on the subject of the letter, but that it was of importance enough to have consulted

Congress thereon; and in that of June 22. he tells the President in direct terms, that Congress ought already to have been occupied on certain questions which he had been too hasty in deciding: thus making himself, & not the President, the judge of the powers ascribed by the constitution to the Executive, & dictating to him the occasion when he should exercise the power of convening Congress at an earlier day than their own act had prescribed.

On the following expressions, no commentary shall be made.

July 9. "Les principes philosophiques proclamées par le Président."

June 22. "Les opinions privées ou publiques de M. le Président, et cette égide ne paroissant, pas suffisante."

June 22. "Le gouvernement fédéral s'est empressé, poussé par je ne scais quelle influence."

June 22. "Je ne puis attribuer, des démarches de cette nature qu'à des impressions étrangères dont le tems et la vérité triompheront."

June 25. "On poursuit avec acharnement, en vertu des instructions de M. le Président, les armateurs Français."

June 14. "Ce réfus tend à accomplir le système infernal du roi d'Angleterre, et des autres rois ses complices, pour faire pèrir par la famine les Républicains Français avec la liberté."

June 8. "La lache abandon de ses amis."

July 25. "En vain le désir de conserver la paix fait-il sacrifier les intérêts de la France à cet intérêt du moment; en vain le soif des richesses l'emporte-

t-elle sur l'honneur dans la balance politique de l'Amérique. Tout ces ménagemens, toute cette condescendance, toute cette humilité n'aboutissent à rien; nos ennemis on rient, et les Français trop confiants sont punis pour avoir cru que la nation Américaine, avoit un pavillon, qu'elle avoit quelque égard pour ses loix, quelque conviction de ses forces, et qu'elle tenoit au sentiment de sa dignité. Il ne m'est pas possible de peindre toute ma sensibilité sur ce scandale qui tend à la diminution de votre commerce, à l'oppression du notre, et à l'abaissement, à l'avilissement des républiques. Si nos concitoyens ont été trompés, si vous n'êtes point en état de soutenir la souveraineté de votre peuple, parlez; nous l'avons garantie quand nous étions esclaves, nous saurons la rendre redoutable étant devenus libres."

We draw a veil over the sensations which these expressions excite. No words can render them; but they will not escape the sensibility of a friendly & magnanimous nation, who will do us justice. We see in them neither the portrait of ourselves, nor the pencil of our friends; but an attempt to embroil both; to add still another nation to the enemies of his country, & to draw on both a reproach, which it is hoped will never stain the history of either. The written proofs, of which mr. Genet himself was the bearer were too unequivocal to leave a doubt that the French nation are constant in their friendship to us. The resolves of their National convention, the letters of their Executive council, attest this truth, in terms which render it necessary to seek in

some other hypothesis the solution of mr. Genet's machinations against our peace & friendship.

Conscious, on our part, of the same friendly & sincere dispositions, we can with truth affirm, both for our nation & government, that we have never omitted a reasonable occasion of manifesting them. For I will not consider as of that character, opportunities of sallying forth from our ports to waylay, rob & murder defenceless merchants & others, who have done us no injury, and who were coming to trade with us in the confidence of our peace & amity. The violation of all the laws of order & morality which bind mankind together, would be an unacceptable offering to a just nation. Recurring then only to recent things, after so afflicting a libel, we recollect with satisfaction, that in the course of two years, by unceasing exertions, we paid up seven years' arrearages & instalments of our debt to France, which the inefficiency of our first form of government had suffered to be accumulating; that pressing on still to the entire fulfilment of our engagements, we have facilitated to mr. Genet the effect of the instalments of the present year, to enable him to send relief to his fellow citizens in France, threatened with famine: that in the first moment of the insurrection which threatened the colony of St. Domingo, we stepped forward to their relief with arms & money, taking freely on ourselves the risk of an unauthorized aid, when delay would have been denial: that we have received according to our best abilities the wretched fugitives from the catastrophe of the principal town of that colony,

who, escaping from the swords & flames of civil war, threw themselves on us naked & houseless, without food or friends, money or other means, their faculties lost & absorbed in the depth of their distresses: that the exclusive admission to sell here the prizes made by France on her enemies, in the present war, tho' unstipulated in our treaties, & unfounded in her own practice, or in that of other nations, as we believe: the spirit manifested by the late grand jury in their proceedings against those who had aided the enemies of France with arms & implements of war, the expressions of attachment to his nation, with which mr. Genet was welcomed on his arrival & journey from south to north, & our long forbearance under his gross usurpations and outrages of the laws & authority of our country, do not bespeak the partialities intimated in his letters. And for these things he rewards us by endeavors to excite discord & distrust between our citizens and those whom they have entrusted with their government, between the different branches of our government, between our nation and his. But none of these things, we hope, will be found in his power. That friendship which dictates to us to bear with his conduct yet a while, lest the interests of his nation here should suffer injury, will hasten them to replace an agent whose dispositions are such a misrepresentation of theirs, and whose continuance here is inconsistent with order, peace, respect, & that friendly correspondence which we hope will ever subsist between the two nations. His government will see too that the case is pressing. That it is impossible for two

sovereign & independent authorities to be going on within our territory at the same time without collision. They will foresee that if mr. Genet perseveres in his proceedings, the consequences would be so hazardous to us, the example so humiliating & pernicious, that we may be forced even to suspend his functions before a successor can arrive to continue them. If our citizens have not already been shedding each other's blood, it is not owing to the moderation of mr. Genet, but to the forbearance of the government. It is well known that if the authority of the laws had been resorted to, to stop the *Little Democrat*, its officers and agents were to have been resisted by the crew of the vessel, consisting partly of American citizens. Such events are too serious, too possible, to be left to hazard, or to what is worse than hazard, the will of an agent whose designs are so mysterious. Lay the case then immediately before his government. Accompany it with assurances, which cannot be stronger than true, that our friendship for the nation is constant & unabating; that, faithful to our treaties, we have fulfilled them in every point to the best of our understanding; that if in anything, however, we have construed them amiss, we are ready to enter into candid explanations, & to do whatever we can be convinced is right; that in opposing the extravagances of an agent, whose character they seem not sufficiently to have known, we have been urged by motives of duty to ourselves & justice to others, which cannot but be approved by those who are just themselves; and finally, that after independence and self-govern-

ment, there is nothing we more sincerely wish than perpetual friendship with them.

I have the honor to be, with great respect & esteem, Dr Sir, your most obedient & most humble servant.

TO JAMES MADISON MAD. MSS.

Aug. 18. 93.

DEAR SIR—My last was of the 11th since which yours of the 5th & 11th are received. I am mortified at your not having your cypher. I now send the key of the numbers in mine of the 3rd this with my letter of the 11th by post & another of the same date by Davy Randolph who will be at Monticello the last week of this month will put you in possession of the state of things to that date. The paper I now inclose will fill up chinks & needs not a word of explanation. To these I must add that orders are given to drive out of our ports the privateers which have been armed in them before the 5th of June, by gentler means if it can be done, & if not by the *ultima ratio:* and we are seizing the prizes brought in since Aug. 7. to restore them to their owners. For those between June 5. & Aug. 7. we engage restitution or compensation. The enclosed paper will explain these distinctions of date, and justify the proceedings.—I return you the little thing of Ld. Chath's because, for particular reasons, were it now to appear it would be imputed to me, & because it will have more effect if publd after the meeting of Congress.—I rejoice at the resurrection of Franklin.

There was a charming thing from the same pen (I conjecture) on the subject of instrumentality late publ[d] by Freneau from the Virga papers.—The addresses in support of the proclmn. are becoming universal, and as universal a rising in support of the President against Genet. Observe that the enclosed paper has only been read in cabinet for the 1st time as yet. On that reading H. objected to expressions implying a censure on other nations ("the war of liberty on herself &c."). He thought expressions of frdship to France suited the occasion. But R. protested against every expression of friendship to that nation lest they should offend the other party, and intimated that he should move to eradicate them all. It will pretty effectually tear up the instrument if he succeeds. *Nous verrons.* Adieu.

P.S. You are free to shew the enclosed to Colo. Monroe. If the appeal which I have mentioned to you should be pushed, I think that by way of compromise, I shall propose that instead of that, the whole correspondence be laid before Congress, merely as a matter of information. What would you think of this?

END OF VOLUME VII

FRAGILE DOES NOT
CIRCULATE

MM CASE

CONSERVATION 1990